

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto







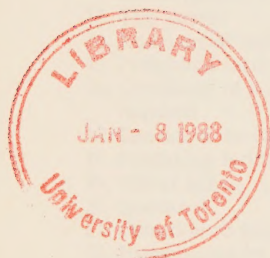




# Bill 88

## An Act to regulate Truck Transportation

The Hon. E. Fulton  
*Minister of Transportation*



*1st Reading*      December 17th, 1987  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



## EXPLANATORY NOTES

The Bill introduces reform of the regulation of for hire trucking in Ontario. The new Act will replace the *Public Commercial Vehicles Act* and is complemented by the *Highway Traffic Amendment Act, 1987* and the *Ontario Highway Transport Board Amendment Act, 1987*.

The Bill changes the entry test from an examination of the need for additional service to an examination of the fitness of the applicant.

In order to obtain a licence under the new Act, all applicants must pass a fitness test. At the time of the application, the applicant or an employee must hold a Certificate of Competency which will be obtained by passing a written test. This test will cover that prospective truckers have knowledge of safe truck operation, trucking legislation, safety, insurance requirements and maintenance practices. Another factor will be the applicant's past performance record.

For the first five years, the fitness test will be supplemented by a public interest test. This test will take the form of a public hearing and will be used only when any interested party can demonstrate that granting the licence would have significant detrimental effect on the public interest.

The Bill also provides for the establishment of an Advisory Committee on Truck Transportation. The Minister will appoint members of the committee drawing from Government, the OHTB, shippers and carriers. The committee will advise the Minister on the effectiveness of the new Act and, in particular, on the need for continuing the public interest test beyond five years.



Bill 88

1987

## An Act to regulate Truck Transportation

### CONTENTS

#### Section

1. Definitions
2. Purpose
3. Operating licence required to transport goods for compensation
4. Registrar to issue licences
5. Licence not transferable
6. Requirements for licence
7. Notice of intention to issue licence
8. Temporary licence
9. Public interest test
10. Matters considered in public interest test
11. Certificate of intercorporate exemption
12. Notification of change—re intercorporate exemption
13. Trip permit
14. Commercial zones
15. Prohibited service
16. Certificate of competency required
17. Licence to be carried
18. Publishing tariffs
19. Bill of lading
20. Insurance
21. Direction to stop
22. Examination by officer
23. Examination of records

#### Section

24. Investigation
25. Copies
26. Cancellation or amendment of certificate
27. Cancellation of licence
28. Notice of proposal to cancel, etc.
29. Refusing or withdrawing privileges
30. Referral to Board
31. Confidentiality
32. Cancellation of licence by Board
33. Penalty
34. Licensee vicariously liable
35. Consent to prosecute
36. Advisory Committee on Truck Transportation
37. Policy statements
38. Ministerial directions to investigate
39. Where *Ontario Highway Transport Board Act* does not apply
40. One valid licence only
41. Regulations
42. Transition
43. Repeal
44. Commencement
45. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—**(1) In this Act,

Definitions

“Board” means the Ontario Highway Transport Board;

“commercial motor vehicle” means a motor vehicle with a permanently attached truck or delivery body and includes a

truck tractor used for hauling purposes, but does not include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

“commercial vehicle” means,

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dual-purpose vehicle and a trailer as defined in the *Highway Traffic Act*, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;

R.S.O. 1980,  
c. 198

“Committee” means the Advisory Committee on Truck Transportation;

“compensation” includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;

“dual-purpose vehicle” means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;

“goods” includes all classes of materials, wares and merchandise and live stock;

“highway” means a highway as defined in the *Highway Traffic Act*;

“implementation date” means the day subsection 3 (1) is proclaimed to be in force;

“licensee” means the holder of an operating licence issued under this Act;

“Minister” means the Minister of Transportation;

“Ministry” means the Ministry of Transportation;

“officer” means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;



“operate” means to cause to be driven on a highway and  
 “operated” has a corresponding meaning;

“operating authority” means a specific authority to operate  
 that is contained within an operating licence;

“operating licence” means an operating licence issued under  
 this Act containing one or more operating authorities;

“owner” means the person in whose name the vehicle portion  
 of a permit is issued for a motor vehicle under the *Highway* R.S.O. 1980,  
*Traffic Act*; c. 198

“prescribed” means prescribed by the regulations;

“public truck” means a commercial motor vehicle or the com-  
 bination of a commercial motor vehicle and trailer or trail-  
 ers drawn by it, operated by the holder of an operating  
 licence;

“Registrar” means the Registrar of Motor Vehicles appointed  
 under the *Highway Traffic Act*;

“regulations” means the regulations made under this Act;

“road construction materials” means rubble carried to or from  
 a construction or demolition site and 01 928—animal or  
 poultry manure, 10—metallic ores, 14 1—dimension stone,  
 quarry, 14 2—crushed or broken stone or riprap,  
 14 41—gravel or sand, excluding abrasive, 14 51—clay,  
 ceramic or refractory minerals, crude, 14 714—apatite or  
 phosphate rock, clay or sand, crude, excluding ground or  
 otherwise treated, 14 715—rock salt, crude, crushed, lump  
 or screened, excluding sodium chloride (common salt),  
 14 719—chemical or fertilizer minerals, not elsewhere clas-  
 sified, excluding ground or otherwise treated, 14 919—non  
 metallic minerals, not elsewhere classified, loam, soil or  
 topsoil, not elsewhere classified, excluding ground or other-  
 wise treated at mine site or fuels, 28 126 32—calcium chlo-  
 ride, liquid, 28 126 33—calcium chloride, other than liquid,  
 28 181 7—urea, other than liquor or liquid, 28 71—  
 fertilizers excluding milled, mined or otherwise prepared,  
 natural boron, sodium or potassium compounds,  
 28 991—salt, common, 29 116—asphalt pitches or tars,  
 petroleum, coal tar, coke oven or natural gas,  
 29 511 40—composition, paving, consisting of sand, slag or  
 stone and asphalt, pitch or tar combined, 29 511  
 45—paving composition, consisting of stone, granulated  
 cork and asphalt, 32 952 15—cinders, clay, shale (expanded  
 shale), slate or volcanic (not pumice stone) or haydite,

32 952 53—slag, basic (cementitious), ground or pulverized,  
 32 952 60—slag, basic (phosphate), ground or pulverized,  
 32 952 78—slag, furnace, crushed, expanded, granulated,  
 ground or pulverized, viz, aluminum, antimony (refuse  
 from antimony ore), brass, copper, detinning (refuse  
 derived from detinning process), ferro silicon (flue slag  
 from ferro-silicon or silicon metal production furnaces),  
 iron, iron-titanium (iron titanium bearing slag), lead, mag-  
 nesium, nickel, tin or zinc, 32 952 91—slag, nec, crushed,  
 granulated, ground or pulverized, without commercial  
 value for the further extraction of metal, 33 112—furnace  
 slag, excluding ground or otherwise treated;

“STCC” means the Standard Transportation Commodity  
 Code filed with the Canadian Transport Commission;

“STCC number” means a number in STCC representing the  
 goods or materials classified under that number;

“toll” means any fee or rate charged, levied or collected for  
 the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to  
 goods or materials is preceded by a STCC number, the goods  
 or materials referred to are those indicated in the STCC by  
 reference to that number.

Purpose

**2.** It is hereby declared that an effective goods movement  
 system by highway is essential to advance the interests of the  
 users of transportation and to maintain the economic well-  
 being and growth of Ontario and that these objectives are to  
 be achieved by the regulatory scheme established by this Act  
 which is to be interpreted so as to advance the objective that  
 the system will,

- (a) foster productive, fair and innovative competition  
 and the existence of a dependable and viable truck-  
 ing industry in furtherance of the public interest;  
 and
- (b) be of benefit to the users of transportation services  
 and not for the protection from competition of indi-  
 vidual providers of such services.

Operating  
 licence  
 required to  
 transport  
 goods for  
 compensation

**3.—(1)** No person shall operate a commercial vehicle on  
 or after the 1st day of January, 1988 to carry goods of any  
 other person for compensation unless it is done,

- (a) under an operating licence held by the person oper-  
 ating the vehicle; and

(b) pursuant to the licence.

(2) Every operating licence authorizes the holder thereof to carry 01 928 1—unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719—chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70—urea, other than liquid and 28 71—fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

General  
authority

(3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Owner-driver  
licence,  
single-source  
licence  
limitations

(4) Subsection (1) does not apply to prohibit the carriage of,

Exception

- (a) goods solely within a commercial zone designated under section 14 or an urban municipality;
- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico;
- (c) goods used on farms and farm products that are 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties, 01 99—farm products, not elsewhere classified in STCC, 01 41—live stock and 01 92—animal specialties that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer;
- (d) 01 421 10—milk, fresh, unprocessed and 20 261—bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name;
- (f) ready mixed concrete;
- (g) 24 1—primary forest or raw wood materials that are the products of the forest from which they are being carried;



- (h) goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;
- R.S.O. 1980,  
c. 425 (i) goods in a bus being operated under the authority of an operating licence issued under the *Public Vehicles Act*; or
- R.S.O. 1980,  
c. 407 (j) goods in a commercial vehicle within eighteen months after the implementation date, where the carriage would have been exempt under the *Public Commercial Vehicles Act*.
- Idem,  
certificate of  
intercorporate  
exemption (5) Subsection (1) does not apply to a holder of a certificate of intercorporate exemption or any affiliated corporation named in the certificate carrying goods owned by any of them pursuant to the certificate.
- Idem, trip  
permit (6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.
- Transportation for  
compensation (7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.
- Operating  
within  
subs. (1) (8) Where an intermediary, such as a freight forwarder, based in Ontario arranges the transportation of goods of others for compensation, on a highway, destined beyond an urban municipality, except where the intermediary is acting on behalf of a consignor or consignee for a pre-arranged fixed fee for the services, the intermediary is operating a commercial vehicle to carry goods of others for compensation within the meaning of subsection (1).
- Exception (9) Subsection (8) does not apply where the arranging of transportation on a highway is merely incidental to the primary business of an intermediary such as a customs brokerage or other business prescribed by regulation.
- Idem (10) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly,
- (a) engages or pays the driver of the vehicle;

- (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
- (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

(11) For the purpose of this section, “lease” means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement. Definition,  
lease

(12) Every person who contravenes subsection (1) is guilty of an offence and, Offence

- (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
- (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

(13) For the purposes of subsection (12), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction. Idem

**4.—**(1) Operating licences shall be issued by the Registrar in accordance with this Act and the regulations. Registrar to  
issue licences

(2) The Registrar may issue an operating licence containing a class of operating authority that is, Special  
licences

- (a) a single-source authority authorizing the licensee to provide,
  - (i) commercial vehicles of which the licensee is the owner or lessee, and
  - (ii) drivers for the vehicles referred to in sub-clause (i),

under one or more contracts; or

- (b) an owner-driver authority authorizing the licensee to provide,
  - (i) one commercial vehicle of which the licensee is the owner or lessee, and

- (ii) a driver for the vehicle referred to in sub-clause (i),

under one contract at any given time.

Limit on  
authorities

- (3) No person shall hold,

- (a) more than one owner-driver authority at the same time; or
- (b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.

Special  
authority

(4) The Registrar, where it is in the public interest to do so, may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

Subject to  
limitations

(5) When granting an operating authority, when there has been a public interest test hearing conducted by the Board wherein the issue of provincial interest has been raised under subsection 9 (5), the Registrar shall make the authority subject to such provisions and limitations as are recommended by the Board, but in no other circumstances may the Registrar make an authority subject to provisions and limitations other than as prescribed.

Exception

(6) Provisions or limitations imposed under subsection (5) shall not serve to limit the number of commercial vehicles operated under an operating authority except where the authority is,

- (a) a single-source authority;
- (b) an owner-driver authority;
- (c) granted after a hearing conducting a public interest test; or
- (d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

Vehicle  
certificates  
limiting  
number of  
vehicles

- (7) The Registrar,



- (a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or
- (b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980,  
c. 407

shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

(8) No holder of a single-source authority or an owner-driver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Limit on  
vehicles  
under  
contract

(9) A vehicle certificate shall state the relevant operating authority.

Vehicle  
certificate

(10) An operating licence may be issued to expire,

Expiry

- (a) at the end of a specified term;
- (b) upon a specified day; or
- (c) upon the occurrence of a specified event.

(11) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Registrar, a notice of the change within fifteen days after the change.

Notice of  
change

(12) Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Ontario  
agent

(13) For the purpose of subsection (2), a “contract” means a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee’s behalf or for a person who is not the other party to the contract.

Definition,  
contract

**5.—**(1) Operating licences and operating authorities are not transferable.

Licence not  
transferable

Death

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

Change in  
control of  
corporation

(3) The directors of a corporate licensee shall report forthwith to the Registrar,

(a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or

(b) an amalgamation,

that may affect control of the operations of the corporation.

Where  
licensee does  
not control  
business

(4) Every licensee shall report to the Registrar any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the licensee.

Exception to  
subs. (4)

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Requirements  
for licence

**6.—**(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Idem

(2) An application for an operating licence may not be accepted by the Ministry from an applicant who does not hold a certificate of competency or whose application is not co-signed by an employee who holds such a certificate.

Idem

(3) Every applicant for an operating licence shall file with the Registrar, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant,

(a) is not an undischarged bankrupt;

(b) is insurable; and

(c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation.

R.S.O. 1980,  
c. 198

Matters to be  
considered

(4) In determining the fitness of an applicant, the Registrar shall consider,

- (a) the past conduct of the applicant or, where the applicant is a corporation, of its officers as disclosed by the record of convictions available to the Registrar under this Act and the *Highway Traffic Act*, *Public Commercial Vehicles Act*, *Motor Vehicle Transport Act* (Canada), *Compulsory Automobile Insurance Act*, *Environmental Protection Act*, *Employment Standards Act*, *Fuel Tax Act*, 1981, *Dangerous Goods Transportation Act*, 1981, *Criminal Code* (Canada), *Canada Labour Code*, *Transportation of Dangerous Goods Act* (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and
- R.S.O. 1980, cc. 198, 407, 83, 141, 137
- 1981, cc. 59, 69
- R.S.C. 1970, cc. M-14, C-34, L-1

- (b) such other matters as are prescribed.

7.—(1) On being satisfied of the fitness of an applicant to hold a licence, the Registrar shall give thirty days notice of the intention to issue an operating licence to the applicant by publication in *The Ontario Gazette*.

Notice of intention to issue licence

(2) Where the Registrar finds that an applicant is not fit to hold an operating licence, the Registrar shall give the applicant written notice thereof with reasons, and the applicant may, within thirty days after receiving the notice, appeal the decision to the Licence Suspension Appeal Board as defined in the *Highway Traffic Act*.

Notice of intention to refuse

(3) After a hearing, the Licence Suspension Appeal Board as defined in the *Highway Traffic Act* may amend or confirm the decision of the Registrar.

Idem

(4) Any person may, within the thirty-day period referred to in subsection (1), file with the Registrar a written request that,

Hearing

- (a) where there is an allegation that false information was given to the Registrar by the applicant, the Registrar hold a hearing to determine the fitness of an applicant; or
- (b) the Board hold a hearing to conduct a public interest test,

and file evidence of service of a copy of the request on the applicant.



Idem

(5) Where a request is made under clause (4) (a) that the Registrar, in his or her absolute discretion, does not consider merely frivolous or vexatious, the Registrar shall hold the hearing requested, which hearing shall be limited to the allegation that false information was given.

Reassessing  
fitness

(6) Where the Registrar finds, after a hearing under subsection (5), that false information was given, the Registrar shall reassess the question of the applicant's fitness to hold a licence.

Issue of  
licence

(7) Where subsection (8) does not apply and no request is made under clause (4) (b), and the Registrar continues to be satisfied that the applicant is fit to hold the licence, the Registrar shall issue the licence applied for.

At Minister's  
direction

(8) The Minister may direct the Board to hold a public interest test and, where the Minister so directs, the Board shall hold the hearing.

Idem,  
by Board

(9) Where a request is made under clause (4) (b), the Board shall, subject to section 9, hold the hearing requested.

Determine  
fitness first

(10) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated.

Exception

(11) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry,

- (a) waste or scrap being 40 29—miscellaneous waste or scrap;
- (b) farm products being 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties and 01 99—farm products, not elsewhere classified in STCC;
- (c) prepared feed being 20 421—prepared feed, animal, fish or poultry, other than dog, cat or other pet food not elsewhere classified, except chopped, ground or pulverized hay, straw or related products, 20 423—canned feed, animal, fish or poultry, other than dog, cat or other pet food;
- (d) peat being 14 917—peat, natural, except ground or otherwise treated;

- (e) fresh fish being 09 1—fresh fish or other marine products not processed;
- (f) buildings or structures being 24 33—prefabricated wooden buildings or panels or sections;
- (g) newspapers and periodicals being 27 11—news-papers and 27 211—periodicals;
- (h) borate and potash being 14 713—borate, potash or soda, crude except ground or otherwise treated;
- (i) ores and concentrates being 10—metallic ores; or
- (j) petroleum crude being 13 111—crude petroleum and 29 113 15—distillate fuel oil.

(12) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

Idem

R.S.O. 1980,  
c. 407

(13) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Stay of  
licence

(14) Clause (4) (b) and subsection (8) cease to apply five years after coming into force.

Application  
of cl. (4) (b)  
and subs. (8)

**8.** Where the Registrar is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Registrar may, despite subsections 6 (1) and 7 (13), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Temporary  
licence

**9.—**(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (4) (b) shall be held only if the person who asked for the test makes out a written case to the Board that,

Public  
interest test

- (a) the granting of the operating authority applied for would be likely to have a significant detrimental effect on the public interest using the criteria set out in subsection 10 (1); and
- (b) the request is not frivolously made.

- Idem (2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.
- Burden of proof (3) In a hearing where a public interest test is conducted, the burden of proof is,
- (a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or
  - (b) where the hearing is as a result of a request under clause 7 (4) (b), on the person making the request.
- Notice to Minister (4) Before holding a hearing under this section, the Board shall give the Minister fifteen days notice thereof.
- Provincial interest (5) If the Minister is of the opinion that the subject-matter of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board,
- (a) to postpone the hearing until thirty days after the day fixed; or
  - (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.
- Policy statements (6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified.
- Review of decision (7) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision.
- Substituting decision (8) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may



give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board.

**10.**—(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (3), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:

Matters  
considered in  
public  
interest test

1. The existence of a dependable and viable trucking industry.
2. The availability of appropriate trucking services to shippers.
3. The ultimate Ontario consumers of goods and services.
4. Overall or net effect on employment within Ontario and the gross provincial product.
5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 37.

(2) Where, after a hearing to conduct a public interest test, the Board finds that granting the operating authority applied for would not likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar grant the authority applied for.

Board report

(3) Where, after a hearing to conduct a public interest test, the Board finds that granting the operating authority applied for will likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar,

Idem

- (a) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
- (b) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating

licence with provisions that vary from those applied for.

Issuing  
licence

(4) Upon receiving a report under subsection (2) or (3), the Registrar shall issue a licence in the terms recommended by the Board.

Deferred  
issuance

(5) The issue of any licence under subsection (4) may be delayed for up to six months after the Board's decision if the Board so recommends.

Certificate of  
inter-  
corporate  
exemption

**11.**—(1) The Registrar shall issue a certificate of intercorporate exemption to every applicant therefor who is not precluded from receiving it by subsection (2).

Where not to  
be issued

(2) A certificate of intercorporate exemption shall not be issued,

(a) to a licensee; or

(b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

Conditions in  
certificate

(3) The Registrar may, in a certificate of intercorporate exemption, set out such conditions and limitations as the Registrar sees fit to govern the carriage of goods under the certificate.

Affiliate

(4) For the purpose of this Act, a corporation is an affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation.

Control

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if,

(a) voting securities of the corporation carrying more than 50 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;

(b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.

(6) For the purpose of subsection (4), a corporation is a subsidiary of another corporation if, Subsidiary

(a) it is controlled by,

(i) the other corporation,

(ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or

(iii) two or more corporations each of which is controlled by the other corporation; or

(b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

**12.—**(1) Every holder of a certificate of intercorporate exemption shall notify the Registrar of any change in the facts set out in the certificate within thirty days after the change. Notification of change—re intercorporate exemption

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000. Offence

**13.—**(1) Subject to subsection (3), the Registrar shall issue a trip permit to every applicant therefor. Trip permit

(2) Every trip permit shall, Idem

(a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and

(b) be subject to the conditions set out therein.

(3) No more than three trip permits may be issued to one person within any twelve-month period. Limit of three permits

**14.—**(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board. Commercial zones

(2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations. Referral to Board



Second  
hearing

(3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for  
the Board to  
consider

(4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

Public  
interest

(5) In considering public interest, the Board shall take into account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services.

Idem

(6) In considering the impact on the providers of services, the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively within the proposed zone and on licensees who would be affected thereby.

Prohibited  
service—  
arranging

**15.—**(1) No person shall knowingly hire, directly or indirectly, or participate in an arrangement to hire a person to carry goods where the services would be carried out in contravention of subsection 3 (1).

Prohibited  
service—  
performing

(2) No person shall,

(a) hold himself out as willing to; or

(b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

Certificate of  
competency  
required

**16.—**(1) No licensee shall carry goods under the authority of an operating licence unless the licensee or an employee of the licensee holds a certificate of competency and, where the regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency.

Delayed  
effect

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance.

Idem

(3) Every licensee, who ceases to meet the requirements referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination.

(4) An employee holding a certificate of competency may be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations.

Limited use  
of certificate

(5) Every licensee shall notify the Registrar within fifteen days after a change in certificate holders whose employment is relied on to satisfy the requirements of subsection (1) of the change.

Change in  
certificate  
holders

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2).

Exception

(7) Every licensee who holds an operating licence restricted to the carriage of goods through Ontario, provided the goods are not picked up or dropped off in Ontario, is exempt from the application of subsection (1).

Idem

(8) Every licensee who holds an operating licence which was issued under the *Public Commercial Vehicles Act* is exempt from the application of subsection (1) with respect to the carriage of goods during the eighteen-month period starting on the implementation date.

Idem  
R.S.O. 1980,  
c. 407

**17.—**(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Licence to be  
carried

(2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,

Certificate of  
intercorporate  
exemption to  
be carried

(a) the certificate or a copy thereof; and

(b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods being carried shall carry at all times while carrying the goods

Copy of  
lease to be  
carried

on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer.

Trip permit  
to be carried

(4) Every driver of a commercial vehicle that is being operated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

Where limit  
on number  
of vehicles

(5) Every person operating a public truck under an operating authority that limits the number of commercial vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

Publishing  
tariffs

**18.**—(1) Except as otherwise provided in the regulations, every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

Tolls

(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

Exception

(3) Subsection (2) does not apply to a licensee who charges the toll under a contract, of which there is written evidence, that is for a term,

(a) of less than fourteen days;

(b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or

(c) other than as set out in clause (a) or (b) but has been approved by the Board.

Coming into  
effect

(4) A tariff of tolls shall not come into effect until fifteen days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

Power of  
Board

(5) The Board, on the application of a licensee, may, in any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).



(6) This section does not apply to an intermediary referred to in subsection 3 (8). Exception

**19.**—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation. Bill of lading

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer. Copy to be retained

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer. Production of bill of lading

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading. Copy of bill of lading to accompany all goods

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading. Way bill

(6) The Registrar may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class. Exemption certificate

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section. Idem

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill. Access to records

**20.** Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee. Insurance

**21.** Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial Direction to stop

vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

Examination  
by officer

R.S.O. 1980,  
c. 198

**22.—**(1) Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the *Highway Traffic Act* and the regulations under either Act are being complied with and the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

Surrender of  
documents

(2) Where a commercial vehicle examined under this section contains goods, the officer conducting the examination may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

Seizure or  
detention

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

(a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and

(b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

Duty on  
driver

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Permit  
suspension

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the *Highway Traffic Act* while it is in the custody of the officer seizing it.

Order to  
release

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

(7) Every security deposited under subsection (6) shall be held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the seizure or detention, the expiration of the six-month period, whichever first occurs.

Disposition  
of security

(8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Idem

(9) All costs necessarily incurred in detaining and storing a vehicle under subsection (3) are a lien on the vehicle.

Lien

**23.** An officer of the Ministry may examine all books, records and documents of,

Examination  
of records

- (a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or
- (b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

**24.—**(1) Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Investigation

(2) For purposes relevant to an investigation under this section, the investigator may inquire into and inspect the business affairs of the person in respect of whom the investigation is being made and may,

Powers of  
investigator

- (a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and inspect books, papers, documents and things relevant to the investigation; and



- (b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

R.S.O. 1980,  
c. 411 and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

No person shall obstruct investigator (3) No person shall obstruct an investigator in the course of an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

Application to justice of the peace (4) Where a justice of the peace is satisfied, upon an application without notice by an investigator acting under this section,

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

Times of entry (5) Every entry and search authorized under subsection (4) shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night.

Expert examination (6) The Minister may appoint an expert to assist in examining books, papers, documents or things examined under clause (2) (a) or subsection (4).

Copies **25.—**(1) Any person,

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or

- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter. -

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true. Idem

**26.**—(1) The Registrar may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Registrar may cancel the certificate. Cancellation or amendment of certificate

(2) The Registrar may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law. Registrar may suspend or cancel certificate  
R.S.O. 1980, c. 198

**27.**—(1) The Registrar may cancel an operating licence, Cancellation of licence

- (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
- (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
- (c) in whole or in part at the request of the licensee.

(2) The Registrar may suspend or cancel an operating licence in whole or in part where, Suspension or cancellation of licence

- (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the

regulations, any Act referred to in clause 6 (4) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted by the licence will not be carried on in accordance with this Act or the regulations;

- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service;
- (c) the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence or of meeting the licensee's financial responsibilities to users of the services; or
- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.

Cancellation  
of bill of  
lading  
exemption  
certificate

(3) The Registrar may cancel a bill of lading exemption of any holder of an operating licence who does not comply with subsection 19 (8) (access to records) or whose records do not disclose the information that is required in a bill of lading or way bill.

Notice of  
proposal to  
cancel, etc.

**28.**—(1) Where the Registrar proposes to suspend or cancel an operating licence, in whole or in part, to suspend, amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Registrar shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

Right to  
hearing

(2) Every person who is served with a notice under subsection (1) and serves on the Registrar and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

Where no  
hearing  
requested

(3) Where the Registrar does not receive a request for a hearing as provided in subsection (2), the Registrar may, on the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

(4) For the purpose of subsection (1), a notice that is mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Registrar shall be deemed to have been served on the third day after the day of mailing.

Service

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteen-day period, and may give such directions as it considers proper consequent upon the extension.

Extension of time

(6) The Registrar, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Parties

(7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Efforts to comply

(8) The Registrar shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Opportunity to examine evidence

(9) The Board shall, after a hearing under this section, make a report to the Registrar, setting out its findings of fact, conclusions of law and recommendations.

Recommendations of Board

(10) The Registrar, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he or she does so, shall give written reasons for the decision to the licensee or holder or, where the Registrar decides not to carry out the proposal, he or she shall so advise the licensee or certificate holder.

Decision subsequent to report

**29.—**(1) The Registrar may,

Refusing or withdrawing privileges

- (a) despite subsection 11 (1), refuse to issue a certificate of intercorporate exemption;
- (b) despite subsection 13 (1), refuse to issue a trip permit; or
- (c) suspend an operating licence,



where the applicant or holder is indebted to the Treasurer of the Province of Ontario in respect of a fee related to the issuance of a certificate, licence or permit.

No right to hearing

(2) Subsections 28 (1) and (2) do not apply in respect of a licence suspended under clause (1) (c).

Dishonoured cheques

(3) Where a cheque tendered as payment for any fee or tax is dishonoured, interest may be charged on the amount of the cheque and a penalty and administrative fee may be imposed.

Regulations

(4) The Lieutenant Governor in Council may make regulations,

- (a) providing for the payment of administrative fees for reinstating suspended operating licences;
- (b) providing for the payment of administrative fees for handling dishonoured cheques;
- (c) prescribing for the purpose of subsection (3), the rate of interest, when interest starts to run and the method of calculating the amount of interest;
- (d) prescribing penalties for the purposes of subsection (3) and the method of determining the amount of any penalty.

Referral to Board where uncertainty

**30.**—(1) The Registrar may at any time refer an operating licence to the Board where, in the opinion of the Registrar, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Registrar and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Issue of clarified licence

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Registrar shall issue an amended operating licence in the form recommended by the Board.

Confidentiality

**31.** Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any pro-

ceeding under this Act or the regulations or of the *Motor Vehicle Transport Act* (Canada);

R.S.C. 1970,  
c. M-14

(b) to his or her counsel; or

(c) with the consent of the person to whom the information relates.

**32.** Where the Registrar receives a report under subsection 5 (3) or (4) or information that leads the Registrar to conclude that a report should have been made under subsection 5 (3) or (4), the Registrar shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Registrar shall cancel the operating licence.

Cancellation  
of licence by  
Board

**33.—**(1) Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500.

Penalty

(2) Every person who knowingly makes a false statement in an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Idem

**34.** Any licensee may be charged with and convicted of an offence under this Act or the regulations for which the driver of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

Licensee  
vicariously  
liable

**35.** No prosecution shall be instituted under this Act without the prior consent of an officer.

Consent to  
prosecute

**36.—**(1) There shall be a committee to be known as the Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Advisory  
Committee  
on Truck  
Transportation

(2) The Minister shall appoint the members of the Committee for such terms as the Minister determines and in making the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Members

Chairman  
and vice-  
chairman

(3) The Minister shall designate a chairman and a vice-chairman from among the members appointed.

Vacancies

(4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Function of  
Committee

(5) The function of the Committee is to advise and make recommendations to the Minister on,

- (a) the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;
- (b) any matter concerning the transportation of goods in commercial vehicles; and
- (c) the degree to which the public interest test is necessary to advance the objectives of section 2.

Policy  
statements

**37.—**(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

Publication

(2) Every policy statement made under subsection (1) shall be published in *The Ontario Gazette*.

Ministerial  
directions to  
investigate

**38.—**(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister.

Hearings

(2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary.

Non-appli-  
cation of  
R.S.O. 1980,  
c. 338

**39.** Section 22 of the *Ontario Highway Transport Board Act* does not apply to an order or decision of the Board under this Act.

One valid  
licence only  
R.S.O. 1980,  
c. 407

**40.—**(1) Every operating licence issued to a licensee under the *Public Commercial Vehicles Act* or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee.

Amending  
licence

(2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1).

Regulations

**41.—**(1) The Lieutenant Governor in Council may make regulations,

1. prescribing classes of licences, licensees and authorities;
2. prescribing fees and the basis for computing fees and providing for the payment thereof;
3. prescribing conditions and limitations to which licences, authorities, permits and certificates of incorporate exemptions shall be subject;
4. prescribing the contents of and the information to be contained in bills of lading and prescribing different contents and information for bills of lading issued by various classes of licensees;
5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
13. prescribing and providing for the information to be marked on articles covered by a bill of lading issued



by licensees and exempting any class of licensees from any provision so prescribed or provided;

14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;
15. prescribing classes of operating authorities for the purposes of subsection 7 (11);
16. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
17. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
18. governing the issue and renewal of operating licences;
19. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
20. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
21. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
22. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
23. prescribing the contents of documents and financial statements and providing for their filing with the Registrar or the Board;

24. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;
25. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;
26. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;
27. providing for the delegation to an officer of the Ministry of such of the powers and duties of the Registrar as may be considered necessary;
28. respecting any matter or thing that is required or permitted to be prescribed under this Act.

(2) Any regulation may be general or particular in its application. Idem

(3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted. Adoption of codes, etc.

**42.**—(1) An operating licence issued pursuant to a certificate of public necessity and convenience under section 10b of the *Public Commercial Vehicles Act* shall be deemed to be an operating licence for the purpose of this Act. Transition  
R.S.O. 1980,  
c. 407

(2) An operating licence or a freight forwarder's licence issued under the *Public Commercial Vehicles Act*, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act during the eighteen-month period starting on the implementation date unless cancelled sooner by the operation of section 40. Idem

(3) A certificate of intercorporate exemption issued under section 4a of the *Public Commercial Vehicles Act* shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act. Idem

(4) Subsection 6 (1) of the *Public Commercial Vehicles Act* does not apply where the application for the licence is made after the implementation date. Limitation re  
R.S.O. 1980,  
c. 407,  
subs. 6 (1)

**43.**—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section 10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, the *Public Commercial Vehicles Amendment Act, 1981*, being chapter 71, the *Public Commercial Vehicles Amendment Act, 1983*, being chapter 79, the *Public Commercial Vehicles Amendment Act, 1984*, being chapter 20 and the *Public Commercial Vehicles Amendment Act, 1986*, being chapter 11, are repealed eighteen months after the implementation date.

Commence-  
ment

**44.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**45.** The short title of this Act is the *Truck Transportation Act, 1987*.

# Bill 88

## An Act to regulate Truck Transportation

The Hon. E. Fulton  
*Minister of Transportation*



*1st Reading*      December 17th, 1987

*2nd Reading*      June 20th, 1988

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Resources Development Committee)*



## EXPLANATORY NOTES

The Bill introduces reform of the regulation of for hire trucking in Ontario. The new Act will replace the *Public Commercial Vehicles Act* and is complemented by the *Highway Traffic Amendment Act, 1987* and the *Ontario Highway Transport Board Amendment Act, 1987*.

The Bill changes the entry test from an examination of the need for additional service to an examination of the fitness of the applicant.

In order to obtain a licence under the new Act, all applicants must pass a fitness test. At the time of the application, the applicant or an employee must hold a Certificate of Competency which will be obtained by passing a written test. This test will cover that prospective truckers have knowledge of safe truck operation, trucking legislation, safety, insurance requirements and maintenance practices. Another factor will be the applicant's past performance record.

For the first five years, the fitness test will be supplemented by a public interest test. This test will take the form of a public hearing and will be used only when any interested party can demonstrate that granting the licence would have significant detrimental effect on the public interest.

The Bill also provides for the establishment of an Advisory Committee on Truck Transportation. The Minister will appoint members of the committee drawing from Government, the OHTB, shippers and carriers. The committee will advise the Minister on the effectiveness of the new Act and, in particular, on the need for continuing the public interest test beyond five years.

Bill 88

1987

## An Act to regulate Truck Transportation

### CONTENTS

#### Section

1. Definitions
2. Purpose
3. Operating licence required to transport goods for compensation
4. Registrar to issue licences
5. Licence not transferable
6. Requirements for licence
7. Notice of intention to issue licence
8. Temporary licence
9. Public interest test
10. Matters considered in public interest test
11. Certificate of intercorporate exemption
12. Notification of change—re intercorporate exemption
13. Trip permit
14. Commercial zones
15. Prohibited service
16. Certificate of competency required
17. Licence to be carried
18. Publishing tariffs
19. Bill of lading
20. Insurance
21. Direction to stop
22. Examination by officer
23. Examination of records

#### Section

24. Investigation
25. Copies
26. Cancellation or amendment of certificate
27. Cancellation of licence
28. Notice of proposal to cancel, etc.
29. Refusing or withdrawing privileges
30. Referral to Board
31. Confidentiality
32. Cancellation of licence by Board
33. Penalty
34. Licensee vicariously liable
35. Consent to prosecute
36. Advisory Committee on Truck Transportation
37. Policy statements
38. Ministerial directions to investigate
39. Where *Ontario Highway Transport Board Act* does not apply
40. One valid licence only
41. Regulations
42. Transition
43. Repeal
44. Commencement
45. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Definitions

“Board” means the Ontario Highway Transport Board;

“commercial motor vehicle” means a motor vehicle with a permanently attached truck or delivery body and includes a

truck tractor used for hauling purposes, but does not include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

“commercial vehicle” means,

R.S.O. 1980,  
c. 198

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dual-purpose vehicle and a trailer as defined in the *Highway Traffic Act*, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;

“Committee” means the Advisory Committee on Truck Transportation;

“compensation” includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;

“dual-purpose vehicle” means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;

“goods” includes all classes of materials, wares and merchandise and live stock;

“highway” means a highway as defined in the *Highway Traffic Act*;

“implementation date” means the day subsection 3 (1) is proclaimed to be in force;

“licensee” means the holder of an operating licence issued under this Act;

“Minister” means the Minister of Transportation;

“Ministry” means the Ministry of Transportation;

“officer” means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;

“operate” means to cause to be driven on a highway and  
“operated” has a corresponding meaning;

“operating authority” means a specific authority to operate  
that is contained within an operating licence;

“operating licence” means an operating licence issued under  
this Act containing one or more operating authorities;

“owner” means the person in whose name the vehicle portion  
of a permit is issued for a motor vehicle under the *Highway* R.S.O. 1980,  
*Traffic Act*; c. 198

“prescribed” means prescribed by the regulations;

“public truck” means a commercial motor vehicle or the com-  
bination of a commercial motor vehicle and trailer or trail-  
ers drawn by it, operated by the holder of an operating  
licence;

“Registrar” means the Registrar of Motor Vehicles appointed  
under the *Highway Traffic Act*;

“regulations” means the regulations made under this Act;

“road construction materials” means rubble carried to or from  
a construction or demolition site and 01 928—animal or  
poultry manure, 10—metallic ores, 14 1—dimension stone,  
quarry, 14 2—crushed or broken stone or riprap,  
14 41—gravel or sand, excluding abrasive, 14 51—clay,  
ceramic or refractory minerals, crude, 14 714—apatite or  
phosphate rock, clay or sand, crude, excluding ground or  
otherwise treated, 14 715—rock salt, crude, crushed, lump  
or screened, excluding sodium chloride (common salt),  
14 719—chemical or fertilizer minerals, not elsewhere clas-  
sified, excluding ground or otherwise treated, 14 919—non  
metallic minerals, not elsewhere classified, loam, soil or  
topsoil, not elsewhere classified, excluding ground or other-  
wise treated at mine site or fuels, 28 126 32—calcium chlo-  
ride, liquid, 28 126 33—calcium chloride, other than liquid,  
28 181 70—urea, other than liquor or liquid, 28 71—  
fertilizers excluding milled, mined or otherwise prepared,  
natural boron, sodium or potassium compounds,  
28 991—salt, common, 29 116—asphalt pitches or tars,  
petroleum, coal tar, coke oven or natural gas,  
29 511 40—composition, paving, consisting of sand, slag or  
stone and asphalt, pitch or tar combined, 29 511  
45—paving composition, consisting of stone, granulated  
cork and asphalt, 32 952 15—cinders, clay, shale (expanded  
shale), slate or volcanic (not pumice stone) or haydite,



32 952 53—slag, basic (cementitious), ground or pulverized, 32 952 60—slag, basic (phosphate), ground or pulverized, 32 952 78—slag, furnace, crushed, expanded, granulated, ground or pulverized, viz, aluminum, antimony (refuse from antimony ore), brass, copper, detinning (refuse derived from detinning process), ferro silicon (flue slag from ferro-silicon or silicon metal production furnaces), iron, iron-titanium (iron titanium bearing slag), lead, magnesium, nickel, tin or zinc, 32 952 91—slag, nec, crushed, granulated, ground or pulverized, without commercial value for the further extraction of metal, 33 112—furnace slag, excluding ground or otherwise treated;

“STCC” means the Standard Transportation Commodity Code Tariff 6001-O, as amended effective the 1st day of July, 1987, filed with the National Transportation Agency;

“STCC number” means a number in STCC representing the goods or materials classified under that number;

“toll” means any fee or rate charged, levied or collected for the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to goods or materials is preceded by a STCC number, the goods or materials referred to are those indicated in the STCC by reference to that number.

Purpose

**2.** It is hereby declared that an effective goods movement system by highway is essential to advance the interests of the users of transportation and to maintain the economic well-being and growth of Ontario and that these objectives are to be achieved by the regulatory scheme established by this Act which is to be interpreted so as to advance the objective that the system will,

- (a) foster productive, fair and innovative competition and the existence of a dependable and viable trucking industry in furtherance of the public interest; and
- (b) be of benefit to the users of transportation services and not for the protection from competition of individual providers of such services.

Operating  
licence  
required to  
transport  
goods for  
compensation

**3.—(1)** No person shall operate a commercial vehicle to carry goods of any other person for compensation unless it is done,

- (a) under an operating licence held by the person operating the vehicle; and
- (b) pursuant to the licence.

(2) Every operating licence authorizes the holder thereof to carry 01 928 1—unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719—chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70—urea, other than liquid and 28 71—fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

General  
authority

(3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Owner-driver  
licence,  
single-source  
licence  
limitations

(4) Subsection (1) does not apply to prohibit the carriage of,

Exception

- (a) goods solely within a commercial zone designated under section 14 or an urban municipality;
- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico;
- (c) goods used on farms and farm products that are 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties, 01 99—farm products, not elsewhere classified in STCC, 01 41—live stock and 01 92—animal specialties that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer;
- (d) 01 421 10—milk, fresh, unprocessed and 20 261—bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name;
- (f) ready mixed concrete;

- (g) 24 1—primary forest or raw wood materials that are the products of the forest from which they are being carried;
- (h) goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;
- (i) goods in a bus being operated under the authority of an operating licence issued under the *Public Vehicles Act*; or
- (j) goods in a commercial vehicle within eighteen months after the implementation date, where the carriage would have been exempt under the *Public Commercial Vehicles Act*.
- R.S.O. 1980, c. 425
- R.S.O. 1980, c. 407
- Idem, certificate of intercorporate exemption
- (5) Subsection (1) does not apply to a holder of a certificate of intercorporate exemption or any affiliated corporation named in the certificate carrying goods owned by any of them pursuant to the certificate.
- Idem, trip permit
- (6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.
- Transportation for compensation
- (7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.
- Operating within subs. (1)
- (8) Where an intermediary, such as a freight forwarder, based in Ontario arranges the transportation of goods of others for compensation, on a highway, destined beyond an urban municipality, except where the intermediary is acting on behalf of a consignor or consignee for a pre-arranged fixed fee for the services, the intermediary is operating a commercial vehicle to carry goods of others for compensation within the meaning of subsection (1).
- Exception
- (9) Subsection (8) does not apply where the arranging of transportation on a highway is merely incidental to the primary business of an intermediary such as a customs brokerage or other business prescribed by regulation.

(10) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly, <sup>Idem</sup>

- (a) engages or pays the driver of the vehicle;
- (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
- (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

(11) For the purpose of this section, “lease” means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement. <sup>Definition, lease</sup>

(12) Every person who contravenes subsection (1) is guilty of an offence and, <sup>Offence</sup>

- (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
- (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

(13) For the purposes of subsection (12), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction. <sup>Idem</sup>

**4.—**(1) Operating licences shall be issued by the Registrar in accordance with this Act and the regulations. <sup>Registrar to issue licences</sup>

(2) The Registrar may issue an operating licence containing a class of operating authority that is, <sup>Special licences</sup>

- (a) a single-source authority authorizing the licensee to provide,
  - (i) commercial vehicles of which the licensee is the owner or lessee, and
  - (ii) drivers for the vehicles referred to in sub-clause (i),

under one or more contracts; or



(b) an owner-driver authority authorizing the licensee to provide,

(i) one commercial vehicle of which the licensee is the owner or lessee, and

(ii) a driver for the vehicle referred to in sub-clause (i),

under one contract at any given time.

Limit on  
authorities

(3) No person shall hold,

(a) more than one owner-driver authority at the same time; or

(b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.

Special  
authority

(4) The Registrar, where it is in the public interest to do so, may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

Subject to  
limitations

(5) When granting an operating authority, when there has been a public interest test hearing conducted by the Board wherein the issue of provincial interest has been raised under subsection 9 (5), the Registrar shall make the authority subject to such provisions and limitations as are recommended by the Board, but in no other circumstances may the Registrar make an authority subject to provisions and limitations other than as prescribed.

Exception

(6) Provisions or limitations imposed under subsection (5) shall not serve to limit the number of commercial vehicles operated under an operating authority except where the authority is,

(a) a single-source authority;

(b) an owner-driver authority;

(c) granted after a hearing conducting a public interest test; or

(d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

(7) The Registrar,

Vehicle  
certificates  
limiting  
number of  
vehicles

- (a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or
- (b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980,  
c. 407

shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

(8) No holder of a single-source authority or an owner-driver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Limit on  
vehicles  
under  
contract

(9) A vehicle certificate shall state the relevant operating authority.

Vehicle  
certificate

(10) An operating licence may be issued to expire,

Expiry

- (a) at the end of a specified term;
- (b) upon a specified day; or
- (c) upon the occurrence of a specified event.

(11) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Registrar, a notice of the change within fifteen days after the change.

Notice of  
change

(12) Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Ontario  
agent

(13) For the purpose of subsection (2), a “contract” means a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee’s

Definition,  
contract


behalf or for a person who is not the other party to the contract.



Compliance  
with 1986,  
c. 1 (Can.),  
1976-77,  
c. 52 (Can.)

(14) It is a condition of every operating licence that neither the holder thereof nor the driver of a public truck operated thereunder is in contravention of the *Customs Act* (Canada) and the *Immigration Act, 1976* (Canada) and the regulations made thereunder.

Idem

(15) The driver of a commercial motor vehicle registered in a jurisdiction other than a province or territory of Canada and operated under the authority of an operating licence shall carry documents indicating compliance with subsection (14), and subsection 22 (2) applies to such documents. 

Licence not  
transferable

**5.—**(1) Operating licences and operating authorities are not transferable.

Death

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

Change in  
control of  
corporation

(3) The directors of a corporate licensee shall report forthwith to the Registrar,

(a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or

(b) an amalgamation,

that may affect control of the operations of the corporation.

Where  
licensee does  
not control  
business

(4) Every licensee shall report to the Registrar any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the licensee.

Exception to  
subs. (4)

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Requirements  
for licence

**6.—**(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Idem

(2) An application for an operating licence may not be accepted by the Ministry from an applicant who does not hold

a certificate of competency or whose application is not co-signed by an employee who holds such a certificate.

(3) Every applicant for an operating licence shall file with the Registrar, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant, Idem

(a) is not an undischarged bankrupt;

(b) is insurable; and

(c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation. R.S.O. 1980,  
c. 198

(4) In determining the fitness of an applicant, the Registrar shall consider, Matters to be  
considered

(a) the past conduct of the applicant and, where the applicant is a corporation, of its officers as disclosed by the record of convictions available to the Registrar under this Act and the *Highway Traffic Act*, *Public Commercial Vehicles Act*, *Motor Vehicle Transport Act* (Canada), *Compulsory Automobile Insurance Act*, *Environmental Protection Act*, *Employment Standards Act*, *Fuel Tax Act*, 1981, *Dangerous Goods Transportation Act*, 1981, *Criminal Code* (Canada), *Canada Labour Code*, *Transportation of Dangerous Goods Act* (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and R.S.O. 1980,  
cc. 198, 407,  
83, 141, 137  
  
1981, cc. 59,  
69  
  
R.S.C. 1970,  
cc. M-14,  
C-34, L-1

➡ (b) such other matters as are prescribed.

(5) Subsection (2) does not apply where the application is for an operating licence to carry goods of a nature and on a scale that had been exempt under the *Public Commercial Vehicles Act* and the applicant was engaged in the transportation during the six months immediately preceding the date of the application. Exception

7.—(1) On being satisfied of the fitness of an applicant to hold a licence, the Registrar shall give thirty days notice of the Notice of  
intention to  
issue licence



intention to issue an operating licence to the applicant by publication in *The Ontario Gazette*.

Notice of  
intention to  
refuse

(2) Where the Registrar finds that an applicant is not fit to hold an operating licence, the Registrar shall give the applicant written notice thereof with reasons, and the applicant may, within thirty days after receiving the notice, appeal the decision to the Licence Suspension Appeal Board as defined in the *Highway Traffic Act*.

R.S.O. 1980,  
c. 198

Idem

(3) After a hearing, the Licence Suspension Appeal Board as defined in the *Highway Traffic Act* may amend or confirm the decision of the Registrar.

Hearing

(4) Any person may, within the thirty-day period referred to in subsection (1), file with the Registrar a written request that,

(a) where there is an allegation that false information was given to the Registrar by the applicant, the Registrar hold a hearing to determine the fitness of an applicant; or

(b) the Board hold a hearing to conduct a public interest test,

and file evidence of service of a copy of the request on the applicant.

Idem

(5) Where a request is made under clause (4) (a) that the Registrar, in his or her absolute discretion, does not consider merely frivolous or vexatious, the Registrar shall hold the hearing requested, which hearing shall be limited to the allegation that false information was given.

Reassessing  
fitness

(6) Where the Registrar finds, after a hearing under subsection (5), that false information was given, the Registrar shall reassess the question of the applicant's fitness to hold a licence.

Issue of  
licence

(7) Where subsection (8) does not apply and no request is made under clause (4) (b), and the Registrar continues to be satisfied that the applicant is fit to hold the licence, the Registrar shall issue the licence applied for.

At Minister's  
direction

(8) The Minister may direct the Board to hold a public interest test and, where the Minister so directs, the Board shall hold the hearing.

(9) Where a request is made under clause (4) (b), the Board shall, subject to section 9, hold the hearing requested. Idem,  
by Board

(10) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated. Determine  
fitness first

(11) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry, Exception

- (a) waste or scrap being 40 29—miscellaneous waste or scrap;
- (b) farm products being 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties and 01 99—farm products, not elsewhere classified in STCC;
- (c) prepared feed being 20 421—prepared feed, animal, fish or poultry, other than dog, cat or other pet food not elsewhere classified, except chopped, ground or pulverized hay, straw or related products, 20 423—canned feed, animal, fish or poultry, other than dog, cat or other pet food;
- (d) peat being 14 917—peat, natural, except ground or otherwise treated;
- (e) fresh fish being 09 1—fresh fish or other marine products not processed;
- (f) buildings or structures being 24 33—prefabricated wooden buildings or panels or sections;
- (g) newspapers and periodicals being 27 11—news-papers and 27 211—periodicals;
- (h) borate and potash being 14 713—borate, potash or soda, crude except ground or otherwise treated;
- (i) ores and concentrates being 10—metallic ores; or
- (j) petroleum crude being 13 111—crude petroleum and 29 113 15—distillate fuel oil.

(12) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for Idem  
R.S.O. 1980,  
c. 407

does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

R.S.O. 1980,  
c. 407

Stay of  
licence

(13) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Application  
of cl. (4) (b)  
and subs. (8)

(14) Clause (4) (b) and subsection (8) cease to apply five years after coming into force.

Temporary  
licence

**8.** Where the Registrar is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Registrar may, despite subsections 6 (1) and 7 (13), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Public  
interest test

**9.—**(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (4) (b) shall be held only if the person who asked for the test makes out a written case to the Board that,

(a) the granting of the operating authority applied for would be likely to have a significant detrimental effect on the public interest using the criteria set out in subsection 10 (1); and

(b) the request is not frivolously made.

Idem

(2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.

Burden of  
proof

(3) In a hearing where a public interest test is conducted, the burden of proof is,

(a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or

(b) where the hearing is as a result of a request under clause 7 (4) (b), on the person making the request.

Notice to  
Minister

(4) Before holding a hearing under this section, the Board shall give the Minister fifteen days notice thereof.

Provincial  
interest

(5) If the Minister is of the opinion that the subject-matter of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall

so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board,

- (a) to postpone the hearing until thirty days after the day fixed; or
- (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.

(6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified.

Policy  
statements

(7) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision.

Review of  
decision

(8) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board.

Substituting  
decision

**10.—**(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (3), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:

Matters  
considered in  
public  
interest test

1. The existence of a dependable and viable trucking industry.
2. The availability of appropriate trucking services to shippers.



3. The ultimate Ontario consumers of goods and services.
4. Overall or net effect on employment within Ontario and the gross provincial product.
5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 37.

Board report

(2) Where, after a hearing to conduct a public interest test, the Board's decision is that granting the operating authority applied for would not likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar grant the authority applied for.

Idem

(3) Where, after a hearing to conduct a public interest test, the Board's decision is that granting the operating authority applied for will likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar,

- (a) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
- (b) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating licence with provisions that vary from those applied for.

Issuing  
licence

(4) Upon receiving a report under subsection (2) or (3), the Registrar shall issue a licence in the terms recommended by the Board.

Deferred  
issuance

(5) The issue of any licence under subsection (4) may be delayed for up to six months after the Board's decision if the Board so recommends.

Certificate of  
inter-  
corporate  
exemption

**11.—**(1) The Registrar shall issue a certificate of intercorporate exemption to every applicant therefor who is not precluded from receiving it by subsection (2).

Where not to  
be issued

(2) A certificate of intercorporate exemption shall not be issued,

- (a) to a licensee; or

- (b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

(3) The Registrar may, in a certificate of intercorporate exemption, set out such conditions and limitations as the Registrar sees fit to govern the carriage of goods under the certificate. Conditions in certificate

(4) For the purpose of this Act, a corporation is an affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation. Affiliate

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if, Control

- (a) voting securities of the corporation carrying more than 50 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;
- (b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.

(6) For the purpose of subsection (4), a corporation is a subsidiary of another corporation if, Subsidiary

- (a) it is controlled by,
  - (i) the other corporation,
  - (ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or
  - (iii) two or more corporations each of which is controlled by the other corporation; or
- (b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

Notification  
of  
change—re  
inter-  
corporate  
exemption  
Offence

**12.—**(1) Every holder of a certificate of intercorporate exemption shall notify the Registrar of any change in the facts set out in the certificate within thirty days after the change.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000.

Trip permit

**13.—**(1) Subject to subsection (3), the Registrar shall issue a trip permit to every applicant therefor.

Idem

(2) Every trip permit shall,

(a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and

(b) be subject to the conditions set out therein.

Limit of  
three permits

(3) No more than three trip permits may be issued to one person within any twelve-month period.

Commercial  
zones

**14.—**(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board.

Referral to  
Board

(2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations.

Second  
hearing

(3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for  
the Board to  
consider

(4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

Public  
interest

(5) In considering public interest, the Board shall take into account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services.

Idem

(6) In considering the impact on the providers of services, the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively

within the proposed zone and on licensees who would be affected thereby.

**15.—**(1) No person shall knowingly hire, directly or indirectly, or participate in an arrangement to hire a person to carry goods where the services would be carried out in contravention of subsection 3 (1). Prohibited service—arranging

- (2) No person shall, Prohibited service—performing
- (a) hold himself out as willing to; or
- (b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

**16.—**(1) No licensee shall carry goods under the authority of an operating licence unless the licensee or an employee of the licensee holds a certificate of competency and, where the regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency. Certificate of competency required

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance. Delayed effect

(3) Every licensee, who ceases to meet the requirements referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination. Idem

(4) An employee holding a certificate of competency may be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations. Limited use of certificate

(5) Every licensee shall notify the Registrar within fifteen days after a change in certificate holders whose employment is relied on to satisfy the requirements of subsection (1) of the change. Change in certificate holders

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2). Exception

(7) Every licensee who holds an operating licence restricted to the carriage of goods through Ontario, provided the goods Idem



are not picked up or dropped off in Ontario, is exempt from the application of subsection (1).

Idem

R.S.O. 1980,  
c. 407

(8) Every licensee who holds an operating licence which was issued under the *Public Commercial Vehicles Act* is exempt from the application of subsection (1) with respect to the carriage of goods during the eighteen-month period starting on the implementation date.

Idem

(9) The holder of an operating licence issued pursuant to an application to which subsection 6 (5) applies is exempt from the application of subsection (1) with respect to the carriage of goods during the eighteen-month period starting on the implementation date.

Licence to be  
carried

**17.—**(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Certificate of  
intercorporate  
exemption to  
be carried

(2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,

(a) the certificate or a copy thereof; and

(b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

Copy of  
lease to be  
carried

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods being carried shall carry at all times while carrying the goods on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer.

Trip permit  
to be carried

(4) Every driver of a commercial vehicle that is being operated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

(5) Every person operating a public truck under an operating authority that limits the number of commercial vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

Where limit  
on number  
of vehicles

**18.**—(1) Except as otherwise provided in the regulations, every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

Publishing  
tariffs

(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

Tolls

(3) Subsections (1) and (2) do not apply to a tariff or toll charged under a contract, of which there is written evidence, that is for a term,

Exception

(a) of less than fourteen days;

(b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or

(c) other than as set out in clause (a) or (b) but has been approved by the Board.

(4) A tariff of tolls shall not come into effect until fifteen days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

Coming into  
effect

(5) The Board, on the application of a licensee, may, in any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).

Power of  
Board

(6) This section does not apply to an intermediary referred to in subsection 3 (8).

Exception

**19.**—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation.

Bill of lading

Copy to be retained

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer.

Production of bill of lading

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer.

Copy of bill of lading to accompany all goods

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading.

Way bill

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading.

Exemption certificate

(6) The Registrar may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class.

Idem

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section.

Access to records

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill.

Insurance

**20.** Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee.

Direction to stop

**21.** Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

Examination by officer

**22.—(1)** Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the *Highway Traffic Act* and the regulations under either Act are being complied with and

the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

(2) Where a commercial vehicle examined under this section contains goods, the officer conducting the examination may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

Surrender of documents

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

Seizure or detention

(a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and

(b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Duty on driver

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the *Highway Traffic Act* while it is in the custody of the officer seizing it.

Permit suspension  
R.S.O. 1980,  
c. 198

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

Order to release

(7) Every security deposited under subsection (6) shall be held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the seizure or detention, the expiration of the six-month period, whichever first occurs.

Disposition of security



Idem

(8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Lien

(9) Where there is a conviction in respect of a charge referred to in subsection (7), all costs necessarily incurred in detaining and storing a vehicle under subsection (3) shall be a lien on the vehicle.

Examination  
of records

**23.** An officer of the Ministry may examine all books, records and documents of,

- (a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or
- (b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

Investigation

**24.—(1)** Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Powers of  
investigator

(2) For purposes relevant to an investigation under this section, the investigator may inquire into and inspect the business affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and inspect books, papers, documents and things relevant to the investigation; and
- (b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980,  
c. 411

(3) No person shall obstruct an investigator in the course of an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

No person  
shall obstruct  
investigator

(4) Where a justice of the peace is satisfied, upon an application without notice by an investigator acting under this section,

Application  
to justice of  
the peace

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

(5) Every entry and search authorized under subsection (4) shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night.

Times of  
entry

(6) The Minister may appoint an expert to assist in examining books, papers, documents or things examined under clause (2) (a) or subsection (4).

Expert  
examination

**25.—(1) Any person,**

Copies

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or
- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter.

Idem

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true.

Cancellation  
or  
amendment  
of certificate

**26.**—(1) The Registrar may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Registrar may cancel the certificate.

Registrar  
may suspend  
or cancel  
certificate

(2) The Registrar may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law.

R.S.O. 1980,  
c. 198

Cancellation  
of licence

**27.**—(1) The Registrar may cancel an operating licence,

- (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
- (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
- (c) in whole or in part at the request of the licensee.

Suspension  
or cancellation  
of licence

(2) The Registrar may suspend or cancel an operating licence in whole or in part where,

- (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the regulations, any Act referred to in clause 6 (4) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted

by the licence will not be carried on in accordance with this Act or the regulations;

- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service;
- (c) the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence or of meeting the licensee's financial responsibilities to users of the services; or
- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.

(3) The Registrar may cancel a bill of lading exemption of any holder of an operating licence who does not comply with subsection 19 (8) (access to records) or whose records do not disclose the information that is required in a bill of lading or way bill.

Cancellation  
of bill of  
lading  
exemption  
certificate

**28.—**(1) Where the Registrar proposes to suspend or cancel an operating licence, in whole or in part, to suspend, amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Registrar shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

Notice of  
proposal to  
cancel, etc.

(2) Every person who is served with a notice under subsection (1) and serves on the Registrar and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

Right to  
hearing

(3) Where the Registrar does not receive a request for a hearing as provided in subsection (2), the Registrar may, on the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

Where no  
hearing  
requested

(4) For the purpose of subsection (1), a notice that is mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Registrar shall be deemed to have been served on the third day after the day of mailing.

Service



Extension of  
time

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteen-day period, and may give such directions as it considers proper consequent upon the extension.

Parties

(6) The Registrar, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Efforts to  
comply

(7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Opportunity  
to examine  
evidence

(8) The Registrar shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Recommendations of  
Board

(9) The Board shall, after a hearing under this section, make a report to the Registrar, setting out its findings of fact, conclusions of law and recommendations.

Decision  
subsequent to  
report

(10) The Registrar, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he or she does so, shall give written reasons for the decision to the licensee or holder or, where the Registrar decides not to carry out the proposal, he or she shall so advise the licensee or certificate holder.

Refusing or  
withdrawing  
privileges

**29.—**(1) The Registrar may,

- (a) despite subsection 11 (1), refuse to issue a certificate of intercorporate exemption;
- (b) despite subsection 13 (1), refuse to issue a trip permit; or
- (c) suspend an operating licence,

where the applicant or holder is indebted to the Treasurer of the Province of Ontario in respect of a fee related to the issuance of a certificate, licence or permit.

No right to  
hearing

(2) Subsections 28 (1) and (2) do not apply in respect of a licence suspended under clause (1) (c).

(3) Where a cheque tendered as payment for any fee or tax is dishonoured, interest may be charged on the amount of the cheque and a penalty and administrative fee may be imposed.

Dishonoured  
cheques

(4) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) providing for the payment of administrative fees for reinstating suspended operating licences;
- (b) providing for the payment of administrative fees for handling dishonoured cheques;
- (c) prescribing for the purpose of subsection (3), the rate of interest, when interest starts to run and the method of calculating the amount of interest;
- (d) prescribing penalties for the purposes of subsection (3) and the method of determining the amount of any penalty.

**30.**—(1) The Registrar may at any time refer an operating licence to the Board where, in the opinion of the Registrar, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Registrar and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Referral to  
Board where  
uncertainty

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Registrar shall issue an amended operating licence in the form recommended by the Board.

Issue of  
clarified  
licence

**31.** Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

Confiden-  
tiality

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations or of the *Motor Vehicle Transport Act* (Canada);
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

R.S.C. 1970,  
c. M-14

Cancellation  
of licence by  
Board

**32.** Where the Registrar receives a report under subsection 5 (3) or (4) or information that leads the Registrar to conclude that a report should have been made under subsection 5 (3) or (4), the Registrar shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Registrar shall cancel the operating licence.

Penalty

**33.—**(1) Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500.

Idem

(2) Every person who knowingly makes a false statement in an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Licensee  
vicariously  
liable

**34.** Any licensee may be charged with and convicted of an offence under this Act or the regulations for which the driver of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

Consent to  
prosecute

**35.** No prosecution shall be instituted under this Act without the prior consent of an officer.

Advisory  
Committee  
on Truck  
Transportation

**36.—**(1) There shall be a committee to be known as the Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Members

(2) The Minister shall appoint the members of the Committee for such terms as the Minister determines and in making the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Chairman  
and vice-  
chairman

(3) The Minister shall designate a chairman and a vice-chairman from among the members appointed.

Vacancies

(4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Function of  
Committee

(5) The function of the Committee is to advise and make recommendations to the Minister on,

- (a) the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;
- (b) any matter concerning the transportation of goods in commercial vehicles; and
- (c) the degree to which the public interest test is necessary to advance the objectives of section 2.

**37.**—(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate. Policy statements

(2) Every policy statement made under subsection (1) shall be published in *The Ontario Gazette*. Publication

**38.**—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister. Ministerial directions to investigate

(2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary. Hearings

**39.** Section 22 of the *Ontario Highway Transport Board Act* does not apply to an order or decision of the Board under this Act. Non-application of R.S.O. 1980, c. 338

**40.**—(1) Every operating licence issued to a licensee under the *Public Commercial Vehicles Act* or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee. One valid licence only R.S.O. 1980, c. 407

(2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1). Amending licence

**41.**—(1) The Lieutenant Governor in Council may make regulations, Regulations

- 1. prescribing classes of licences, licensees and authorities;
- 2. prescribing fees and the basis for computing fees and providing for the payment thereof;



3. prescribing conditions and limitations to which licences, authorities, permits and certificates of intercorporate exemptions shall be subject;
4. prescribing the contents of and the information to be contained in bills of lading and prescribing different contents and information for bills of lading issued by various classes of licensees;
5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
13. prescribing and providing for the information to be marked on articles covered by a bill of lading issued by licensees and exempting any class of licensees from any provision so prescribed or provided;
14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;

15. prescribing classes of operating authorities for the purposes of subsection 7 (11);
16. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
17. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
18. governing the issue and renewal of operating licences;
19. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
20. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
21. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
22. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
23. prescribing the contents of documents and financial statements and providing for their filing with the Registrar or the Board;
24. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;
25. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;

26. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;
27. providing for the delegation to an officer of the Ministry of such of the powers and duties of the Registrar as may be considered necessary;
28. respecting any matter or thing that is required or permitted to be prescribed under this Act.

Idem (2) Any regulation may be general or particular in its application.

Adoption of codes, etc. (3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted.

Transition R.S.O. 1980, c. 407 **42.**—(1) An operating licence issued pursuant to a certificate of public necessity and convenience under section 10b of the *Public Commercial Vehicles Act* shall be deemed to be an operating licence for the purpose of this Act.

Idem (2) An operating licence or a freight forwarder's licence issued under the *Public Commercial Vehicles Act*, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act during the eighteen-month period starting on the implementation date unless cancelled sooner by the operation of section 40.

Idem (3) A certificate of intercorporate exemption issued under section 4a of the *Public Commercial Vehicles Act* shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act.

Limitation re R.S.O. 1980, c. 407, subs. 6 (1) (4) Subsection 6 (1) of the *Public Commercial Vehicles Act* does not apply where the application for the licence is made after the implementation date.

**43.**—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section 10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, the *Public Commercial Vehicles Amendment Act, 1981*, being chapter 71, the *Public Commercial Vehicles Amendment Act, 1983*, being chapter 79, the *Public Commercial Vehicles Amendment Act, 1984*, being chapter 20 and the *Public Commercial Vehicles Amendment Act, 1986*, being chapter 11, are repealed eighteen months after the implementation date.

**44.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**45.** The short title of this Act is the *Truck Transportation Act, 1988*. Short title









# Bill 88

(Chapter 64  
*Statutes of Ontario, 1988*)

## An Act to regulate Truck Transportation

The Hon. E. Fulton  
*Minister of Transportation*



<i>1st Reading</i>	December 17th, 1987
<i>2nd Reading</i>	June 20th, 1988
<i>3rd Reading</i>	December 15th, 1988
<i>Royal Assent</i>	December 15th, 1988





Bill 88

1987

## An Act to regulate Truck Transportation

### CONTENTS

Section	Section
1. Definitions	24. Investigation
2. Purpose	25. Copies
3. Operating licence required to transport goods for compensation	26. Cancellation or amendment of certificate
4. Registrar to issue licences	27. Cancellation of licence
5. Licence not transferable	28. Notice of proposal to cancel, etc.
6. Requirements for licence	29. Refusing or withdrawing privileges
7. Notice of intention to issue licence	30. Referral to Board
8. Temporary licence	31. Confidentiality
9. Public interest test	32. Cancellation of licence by Registrar
10. Matters considered in public interest test	33. Penalty
11. Certificate of intercorporate exemption	34. Licensee vicariously liable
12. Notification of change—re intercorporate exemption	35. Consent to prosecute
13. Trip permit	36. Advisory Committee on Truck Transportation
14. Commercial zones	37. Policy statements
15. Prohibited service	38. Ministerial directions to investigate
16. Certificate of competency required	39. Where <i>Ontario Highway Transport Board Act</i> does not apply
17. Licence to be carried	40. One valid licence only
18. Publishing tariffs	41. Regulations
19. Bill of lading	42. Transition
20. Insurance	43. Repeal
21. Direction to stop	44. Commencement
22. Examination by officer	45. Short title
23. Examination of records	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Definitions

“Board” means the Ontario Highway Transport Board;

“commercial motor vehicle” means a motor vehicle with a permanently attached truck or delivery body and includes a

truck tractor used for hauling purposes, but does not include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

“commercial vehicle” means,

R.S.O. 1980,  
c. 198

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dual-purpose vehicle and a trailer as defined in the *Highway Traffic Act*, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;

“Committee” means the Advisory Committee on Truck Transportation;

“compensation” includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;

“dual-purpose vehicle” means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;

“goods” includes all classes of materials, wares and merchandise and live stock;

“highway” means a highway as defined in the *Highway Traffic Act*;

“implementation date” means the day subsection 3 (1) is proclaimed to be in force;

“licensee” means the holder of an operating licence issued under this Act;

“Minister” means the Minister of Transportation;

“Ministry” means the Ministry of Transportation;

“officer” means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;

“operate” means to cause to be driven on a highway and  
 “operated” has a corresponding meaning;

“operating authority” means a specific authority to operate  
 that is contained within an operating licence;

“operating licence” means an operating licence issued under  
 this Act containing one or more operating authorities;

“owner” means the person in whose name the vehicle portion  
 of a permit is issued for a motor vehicle under the *Highway* R.S.O. 1980,  
*Traffic Act*; c. 198

“prescribed” means prescribed by the regulations;

“public truck” means a commercial motor vehicle or the com-  
 bination of a commercial motor vehicle and trailer or trail-  
 ers drawn by it, operated by the holder of an operating  
 licence;

“Registrar” means the Registrar of Motor Vehicles appointed  
 under the *Highway Traffic Act*;

“regulations” means the regulations made under this Act;

“road construction materials” means rubble carried to or from  
 a construction or demolition site and 01 928—animal or  
 poultry manure, 10—metallic ores, 14 1—dimension stone,  
 quarry, 14 2—crushed or broken stone or riprap, 14 41—gravel or sand, excluding abrasive, 14 51—clay,  
 ceramic or refractory minerals, crude, 14 714—apatite or  
 phosphate rock, clay or sand, crude, excluding ground or  
 otherwise treated, 14 715—rock salt, crude, crushed, lump  
 or screened, excluding sodium chloride (common salt),  
 14 719—chemical or fertilizer minerals, not elsewhere clas-  
 sified, excluding ground or otherwise treated, 14 919—non  
 metallic minerals, not elsewhere classified, loam, soil or  
 topsoil, not elsewhere classified, excluding ground or other-  
 wise treated at mine site or fuels, 28 126 32—calcium chlo-  
 ride, liquid, 28 126 33—calcium chloride, other than liquid,  
 28 181 70—urea, other than liquor or liquid, 28 71—  
 fertilizers excluding milled, mined or otherwise prepared,  
 natural boron, sodium or potassium compounds,  
 28 991—salt, common, 29 116—asphalt pitches or tars,  
 petroleum, coal tar, coke oven or natural gas,  
 29 511 40—composition, paving, consisting of sand, slag or  
 stone and asphalt, pitch or tar combined, 29 511  
 45—paving composition, consisting of stone, granulated  
 cork and asphalt, 32 952 15—cinders, clay, shale (expanded  
 shale), slate or volcanic (not pumice stone) or haydite,



32 952 53—slag, basic (cementitious), ground or pulverized,  
 32 952 60—slag, basic (phosphate), ground or pulverized,  
 32 952 78—slag, furnace, crushed, expanded, granulated,  
 ground or pulverized, viz, aluminum, antimony (refuse  
 from antimony ore), brass, copper, detinning (refuse  
 derived from detinning process), ferro silicon (flue slag  
 from ferro-silicon or silicon metal production furnaces),  
 iron, iron-titanium (iron titanium bearing slag), lead, mag-  
 nesium, nickel, tin or zinc, 32 952 91—slag, nec, crushed,  
 granulated, ground or pulverized, without commercial  
 value for the further extraction of metal, 33 112—furnace  
 slag, excluding ground or otherwise treated;

“STCC” means the Standard Transportation Commodity  
 Code Tariff 6001-O, as amended effective the 1st day of  
 July, 1987, filed with the National Transportation Agency;

“STCC number” means a number in STCC representing the  
 goods or materials classified under that number;

“toll” means any fee or rate charged, levied or collected for  
 the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to  
 goods or materials is preceded by a STCC number, the goods  
 or materials referred to are those indicated in the STCC by  
 reference to that number.

Purpose

**2.** It is hereby declared that an effective goods movement  
 system by highway is essential to advance the interests of the  
 users of transportation and to maintain the economic well-  
 being and growth of Ontario and that these objectives are to  
 be achieved by the regulatory scheme established by this Act  
 which is to be interpreted so as to advance the objective that  
 the system will,

- (a) foster productive, fair and innovative competition  
 and the existence of a dependable and viable truck-  
 ing industry in furtherance of the public interest;  
 and
- (b) be of benefit to the users of transportation services  
 and not for the protection from competition of indi-  
 vidual providers of such services.

Operating  
 licence  
 required to  
 transport  
 goods for  
 compensation

**3.—(1)** No person shall operate a commercial vehicle to  
 carry goods of any other person for compensation unless it is  
 done,

- (a) under an operating licence held by the person operating the vehicle; and
- (b) pursuant to the licence.

(2) Every operating licence authorizes the holder thereof to carry 01 928 1—unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719—chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70—urea, other than liquid and 28 71—fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

General  
authority

(3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Owner-driver  
licence,  
single-source  
licence  
limitations

(4) Subsection (1) does not apply to prohibit the carriage of,

Exception

- (a) goods solely within a commercial zone designated under section 14 or an urban municipality;
- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico;
- (c) goods used on farms and farm products that are 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties, 01 99—farm products, not elsewhere classified in STCC, 01 41—live stock and 01 92—animal specialties that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer;
- (d) 01 421 10—milk, fresh, unprocessed and 20 261—bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name;
- (f) ready mixed concrete;

(g) 24 1—primary forest or raw wood materials that are the products of the forest from which they are being carried;

(h) goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;

R.S.O. 1980,  
c. 425

(i) goods in a bus being operated under the authority of an operating licence issued under the *Public Vehicles Act*; or

R.S.O. 1980,  
c. 407

(j) goods in a commercial vehicle within eighteen months after the implementation date, where the carriage would have been exempt under the *Public Commercial Vehicles Act*.

Idem,  
certificate of  
intercor-  
porate  
exemption

(5) Subsection (1) does not apply to a holder of a certificate of intercorporate exemption or any affiliated corporation named in the certificate carrying goods owned by any of them pursuant to the certificate.

Idem, trip  
permit

(6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.

Transportation for  
compensation

(7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.

Operating  
within  
subs. (1)

(8) Where an intermediary, such as a freight forwarder, based in Ontario arranges the transportation of goods of others for compensation, on a highway, destined beyond an urban municipality, except where the intermediary is acting on behalf of a consignor or consignee for a pre-arranged fixed fee for the services, the intermediary is operating a commercial vehicle to carry goods of others for compensation within the meaning of subsection (1).

Exception

(9) Subsection (8) does not apply where the arranging of transportation on a highway is merely incidental to the primary business of an intermediary such as a customs brokerage or other business prescribed by regulation.

(10) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly, Idem

- (a) engages or pays the driver of the vehicle;
- (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
- (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

(11) For the purpose of this section, “lease” means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement. Definition,  
lease

(12) Every person who contravenes subsection (1) is guilty of an offence and, Offence

- (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
- (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

(13) For the purposes of subsection (12), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction. Idem

**4.—**(1) Operating licences shall be issued by the Registrar in accordance with this Act and the regulations. Registrar to  
issue licences

(2) The Registrar may issue an operating licence containing a class of operating authority that is, Special  
licences

- (a) a single-source authority authorizing the licensee to provide,
  - (i) commercial vehicles of which the licensee is the owner or lessee, and
  - (ii) drivers for the vehicles referred to in sub-clause (i),

under one or more contracts; or



(b) an owner-driver authority authorizing the licensee to provide,

(i) one commercial vehicle of which the licensee is the owner or lessee, and

(ii) a driver for the vehicle referred to in sub-clause (i),

under one contract at any given time.

Limit on  
authorities

(3) No person shall hold,

(a) more than one owner-driver authority at the same time; or

(b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.

Special  
authority

(4) The Registrar, where it is in the public interest to do so, may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

Subject to  
limitations

(5) When granting an operating authority, when there has been a public interest test hearing conducted by the Board wherein the issue of provincial interest has been raised under subsection 9 (5), the Registrar shall make the authority subject to such provisions and limitations as are recommended by the Board, but in no other circumstances may the Registrar make an authority subject to provisions and limitations other than as prescribed.

Exception

(6) Provisions or limitations imposed under subsection (5) shall not serve to limit the number of commercial vehicles operated under an operating authority except where the authority is,

(a) a single-source authority;

(b) an owner-driver authority;

(c) granted after a hearing conducting a public interest test; or

(d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

(7) The Registrar,

- (a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or

Vehicle  
certificates  
limiting  
number of  
vehicles

- (b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980,  
c. 407

shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

(8) No holder of a single-source authority or an owner-driver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Limit on  
vehicles  
under  
contract

(9) A vehicle certificate shall state the relevant operating authority.

Vehicle  
certificate

(10) An operating licence may be issued to expire,

Expiry

- (a) at the end of a specified term;
- (b) upon a specified day; or
- (c) upon the occurrence of a specified event.

(11) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Registrar, a notice of the change within fifteen days after the change.

Notice of  
change

(12) Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Ontario  
agent

(13) For the purpose of subsection (2), a "contract" means a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee's

Definition,  
contract

behalf or for a person who is not the other party to the contract.

Compliance with 1986, c. 1 (Can.), 1976-77, c. 52 (Can.)

(14) It is a condition of every operating licence that neither the holder thereof nor the driver of a public truck operated thereunder is in contravention of the *Customs Act* (Canada) and the *Immigration Act, 1976* (Canada) and the regulations made thereunder.

Idem

(15) The driver of a commercial motor vehicle registered in a jurisdiction other than a province or territory of Canada and operated under the authority of an operating licence shall carry documents indicating compliance with subsection (14), and subsection 22 (2) applies to such documents.

Licence not transferable

**5.—**(1) Operating licences and operating authorities are not transferable.

Death

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

Change in control of corporation

(3) The directors of a corporate licensee shall report forthwith to the Registrar,

(a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or

(b) an amalgamation,

that may affect control of the operations of the corporation.

Where licensee does not control business

(4) Every licensee shall report to the Registrar any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the licensee.

Exception to subs. (4)

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Requirements for licence

**6.—**(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Idem

(2) An application for an operating licence may not be accepted by the Ministry from an applicant who does not hold

a certificate of competency or whose application is not co-signed by an employee who holds such a certificate.

(3) Every applicant for an operating licence shall file with the Registrar, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant, Idem

(a) is not an undischarged bankrupt;

(b) is insurable; and

(c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation. R.S.O. 1980,  
c. 198

(4) In determining the fitness of an applicant, the Registrar shall consider, Matters to be  
considered

(a) the past conduct of the applicant and, where the applicant is a corporation, of its officers as disclosed by the record of convictions available to the Registrar under this Act and the *Highway Traffic Act*, *Public Commercial Vehicles Act*, *Motor Vehicle Transport Act* (Canada), *Compulsory Automobile Insurance Act*, *Environmental Protection Act*, *Employment Standards Act*, *Fuel Tax Act*, 1981, *Dangerous Goods Transportation Act*, 1981, *Criminal Code* (Canada), *Canada Labour Code*, *Transportation of Dangerous Goods Act* (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and R.S.O. 1980,  
cc. 198, 407,  
83, 141, 137  
  
1981, cc. 59,  
69  
  
R.S.C. 1970,  
cc. M-14,  
C-34, L-1

(b) such other matters as are prescribed.

(5) Subsection (2) does not apply where the application is for an operating licence to carry goods of a nature and on a scale that had been exempt under the *Public Commercial Vehicles Act* and the applicant was engaged in the transportation during the six months immediately preceding the date of the application. Exception

**7.—(1)** On being satisfied of the fitness of an applicant to hold a licence, the Registrar shall give thirty days notice of the Notice of  
intention to  
issue licence



intention to issue an operating licence to the applicant by publication in *The Ontario Gazette*.

Notice of  
intention to  
refuse

(2) Where the Registrar finds that an applicant is not fit to hold an operating licence, the Registrar shall give the applicant written notice thereof with reasons, and the applicant may, within thirty days after receiving the notice, appeal the decision to the Licence Suspension Appeal Board as defined in the *Highway Traffic Act*.

R.S.O. 1980,  
c. 198

Idem

(3) After a hearing, the Licence Suspension Appeal Board as defined in the *Highway Traffic Act* may amend or confirm the decision of the Registrar.

Hearing

(4) Any person may, within the thirty-day period referred to in subsection (1), file with the Registrar a written request that,

(a) where there is an allegation that false information was given to the Registrar by the applicant, the Registrar hold a hearing to determine the fitness of an applicant; or

(b) the Board hold a hearing to conduct a public interest test,

and file evidence of service of a copy of the request on the applicant.

Idem

(5) Where a request is made under clause (4) (a) that the Registrar, in his or her absolute discretion, does not consider merely frivolous or vexatious, the Registrar shall hold the hearing requested, which hearing shall be limited to the allegation that false information was given.

Reassessing  
fitness

(6) Where the Registrar finds, after a hearing under subsection (5), that false information was given, the Registrar shall reassess the question of the applicant's fitness to hold a licence.

Issue of  
licence

(7) Where subsection (8) does not apply and no request is made under clause (4) (b), and the Registrar continues to be satisfied that the applicant is fit to hold the licence, the Registrar shall issue the licence applied for.

At Minister's  
direction

(8) The Minister may direct the Board to hold a public interest test and, where the Minister so directs, the Board shall hold the hearing.

(9) Where a request is made under clause (4) (b), the Board shall, subject to section 9, hold the hearing requested. Idem,  
by Board

(10) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated. Determine  
fitness first

(11) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry, Exception

- (a) waste or scrap being 40 29—miscellaneous waste or scrap;
- (b) farm products being 01 1—field crops, 01 2—fresh fruits or tree nuts, 01 3—fresh vegetables, 01 91—horticultural specialties and 01 99—farm products, not elsewhere classified in STCC;
- (c) prepared feed being 20 421—prepared feed, animal, fish or poultry, other than dog, cat or other pet food not elsewhere classified, except chopped, ground or pulverized hay, straw or related products, 20 423—canned feed, animal, fish or poultry, other than dog, cat or other pet food;
- (d) peat being 14 917—peat, natural, except ground or otherwise treated;
- (e) fresh fish being 09 1—fresh fish or other marine products not processed;
- (f) buildings or structures being 24 33—prefabricated wooden buildings or panels or sections;
- (g) newspapers and periodicals being 27 11—news-papers and 27 211—periodicals;
- (h) borate and potash being 14 713—borate, potash or soda, crude except ground or otherwise treated;
- (i) ores and concentrates being 10—metallic ores; or
- (j) petroleum crude being 13 111—crude petroleum and 29 113 15—distillate fuel oil.

(12) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for Idem  
R.S.O. 1980,  
c. 407

does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

R.S.O. 1980,  
c. 407

Stay of  
licence

(13) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Application  
of cl. (4) (b)  
and subs. (8)

(14) Clause (4) (b) and subsection (8) cease to apply five years after coming into force.

Temporary  
licence

8. Where the Registrar is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Registrar may, despite subsections 6 (1) and 7 (13), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Public  
interest test

9.—(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (4) (b) shall be held only if the person who asked for the test makes out a written case to the Board that,

- (a) the granting of the operating authority applied for would be likely to have a significant detrimental effect on the public interest using the criteria set out in subsection 10 (1); and
- (b) the request is not frivolously made.

Idem

(2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.

Burden of  
proof

(3) In a hearing where a public interest test is conducted, the burden of proof is,

- (a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or
- (b) where the hearing is as a result of a request under clause 7 (4) (b), on the person making the request.

Notice to  
Minister

(4) Before holding a hearing under this section, the Board shall give the Minister fifteen days notice thereof.

Provincial  
interest

(5) If the Minister is of the opinion that the subject-matter of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall

so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board,

- (a) to postpone the hearing until thirty days after the day fixed; or
- (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.

(6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified.

Policy  
statements

(7) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision.

Review of  
decision

(8) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board.

Substituting  
decision

**10.**—(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (3), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:

Matters  
considered in  
public  
interest test

1. The existence of a dependable and viable trucking industry.
2. The availability of appropriate trucking services to shippers.



3. The ultimate Ontario consumers of goods and services.
4. Overall or net effect on employment within Ontario and the gross provincial product.
5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 37.

Board report (2) Where, after a hearing to conduct a public interest test, the Board's decision is that granting the operating authority applied for would not likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar grant the authority applied for.

Idem (3) Where, after a hearing to conduct a public interest test, the Board's decision is that granting the operating authority applied for will likely have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Registrar and recommend that the Registrar,

- (a) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
- (b) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating licence with provisions that vary from those applied for.

Issuing licence (4) Upon receiving a report under subsection (2) or (3), the Registrar shall issue a licence in the terms recommended by the Board.

Deferred issuance (5) The issue of any licence under subsection (4) may be delayed for up to six months after the Board's decision if the Board so recommends.

Certificate of inter-corporate exemption **11.**—(1) The Registrar shall issue a certificate of inter-corporate exemption to every applicant therefor who is not precluded from receiving it by subsection (2).

Where not to be issued (2) A certificate of intercorporate exemption shall not be issued,

- (a) to a licensee; or

- (b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

(3) The Registrar may, in a certificate of intercorporate exemption, set out such conditions and limitations as the Registrar sees fit to govern the carriage of goods under the certificate.

Conditions in  
certificate

(4) For the purpose of this Act, a corporation is an affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation.

Affiliate

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if,

Control

- (a) voting securities of the corporation carrying more than 50 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;
- (b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.

(6) For the purpose of subsection (4), a corporation is a subsidiary of another corporation if,

Subsidiary

- (a) it is controlled by,
  - (i) the other corporation,
  - (ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or
  - (iii) two or more corporations each of which is controlled by the other corporation; or
- (b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

Notification  
of  
change—re  
inter-  
corporate  
exemption  
Offence

**12.—**(1) Every holder of a certificate of intercorporate exemption shall notify the Registrar of any change in the facts set out in the certificate within thirty days after the change.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000.

Trip permit

**13.—**(1) Subject to subsection (3), the Registrar shall issue a trip permit to every applicant therefor.

Idem

(2) Every trip permit shall,

(a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and

(b) be subject to the conditions set out therein.

Limit of  
three permits

(3) No more than three trip permits may be issued to one person within any twelve-month period.

Commercial  
zones

**14.—**(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board.

Referral to  
Board

(2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations.

Second  
hearing

(3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for  
the Board to  
consider

(4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

Public  
interest

(5) In considering public interest, the Board shall take into account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services.

Idem

(6) In considering the impact on the providers of services, the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively

within the proposed zone and on licensees who would be affected thereby.

**15.—**(1) No person shall knowingly hire, directly or indirectly, or participate in an arrangement to hire a person to carry goods where the services would be carried out in contravention of subsection 3 (1).

Prohibited  
service—  
arranging

(2) No person shall,

Prohibited  
service—  
performing

(a) hold himself out as willing to; or

(b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

**16.—**(1) No licensee shall carry goods under the authority of an operating licence unless the licensee or an employee of the licensee holds a certificate of competency and, where the regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency.

Certificate of  
competency  
required

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance.

Delayed  
effect

(3) Every licensee, who ceases to meet the requirements referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination.

Idem

(4) An employee holding a certificate of competency may be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations.

Limited use  
of certificate

(5) Every licensee shall notify the Registrar within fifteen days after a change in certificate holders whose employment is relied on to satisfy the requirements of subsection (1) of the change.

Change in  
certificate  
holders

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2).

Exception

(7) Every licensee who holds an operating licence restricted to the carriage of goods through Ontario, provided the goods

Idem



are not picked up or dropped off in Ontario, is exempt from the application of subsection (1).

Idem

R.S.O. 1980,  
c. 407

(8) Every licensee who holds an operating licence which was issued under the *Public Commercial Vehicles Act* is exempt from the application of subsection (1) with respect to the carriage of goods during the eighteen-month period starting on the implementation date.

Idem

(9) The holder of an operating licence issued pursuant to an application to which subsection 6 (5) applies is exempt from the application of subsection (1) with respect to the carriage of goods during the eighteen-month period starting on the implementation date.

Licence to be  
carried

**17.—**(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Certificate of  
intercor-  
porate  
exemption to  
be carried

(2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,

(a) the certificate or a copy thereof; and

(b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

Copy of  
lease to be  
carried

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods being carried shall carry at all times while carrying the goods on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer.

Trip permit  
to be carried

(4) Every driver of a commercial vehicle that is being operated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

(5) Every person operating a public truck under an operating authority that limits the number of commercial vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

Where limit  
on number  
of vehicles

**18.**—(1) Except as otherwise provided in the regulations, every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

Publishing  
tariffs

(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

Tolls

(3) Subsections (1) and (2) do not apply to a tariff or toll charged under a contract, of which there is written evidence, that is for a term,

Exception

(a) of less than fourteen days;

(b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or

(c) other than as set out in clause (a) or (b) but has been approved by the Board.

(4) A tariff of tolls shall not come into effect until fifteen days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

Coming into  
effect

(5) The Board, on the application of a licensee, may, in any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).

Power of  
Board

(6) This section does not apply to an intermediary referred to in subsection 3 (8).

Exception

**19.**—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation.

Bill of lading

Copy to be retained

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer.

Production of bill of lading

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer.

Copy of bill of lading to accompany all goods

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading.

Way bill

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading.

Exemption certificate

(6) The Registrar may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class.

Idem

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section.

Access to records

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill.

Insurance

**20.** Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee.

Direction to stop

**21.** Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

Examination by officer

**22.—(1)** Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the *Highway Traffic Act* and the regulations under either Act are being complied with and

the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

(2) Where a commercial vehicle examined under this section contains goods, the officer conducting the examination may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

Surrender of documents

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

Seizure or detention

(a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and

(b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Duty on driver

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the *Highway Traffic Act* while it is in the custody of the officer seizing it.

Permit suspension

R.S.O. 1980, c. 198

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

Order to release

(7) Every security deposited under subsection (6) shall be held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the seizure or detention, the expiration of the six-month period, whichever first occurs.

Disposition of security



Idem (8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Lien (9) Where there is a conviction in respect of a charge referred to in subsection (7), all costs necessarily incurred in detaining and storing a vehicle under subsection (3) shall be a lien on the vehicle.

Examination of records **23.** An officer of the Ministry may examine all books, records and documents of,

- (a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or
- (b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

Investigation **24.—**(1) Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Powers of investigator (2) For purposes relevant to an investigation under this section, the investigator may inquire into and inspect the business affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and inspect books, papers, documents and things relevant to the investigation; and
- (b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980,  
c. 411

(3) No person shall obstruct an investigator in the course of an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

No person  
shall obstruct  
investigator

(4) Where a justice of the peace is satisfied, upon an application without notice by an investigator acting under this section,

Application  
to justice of  
the peace

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

(5) Every entry and search authorized under subsection (4) shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night.

Times of  
entry

(6) The Minister may appoint an expert to assist in examining books, papers, documents or things examined under clause (2) (a) or subsection (4).

Expert  
examination

**25.—(1)** Any person,

Copies

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or
- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter.

Idem

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true.

Cancellation  
or  
amendment  
of certificate

**26.**—(1) The Registrar may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Registrar may cancel the certificate.

Registrar  
may suspend  
or cancel  
certificate

(2) The Registrar may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law.

R.S.O. 1980,  
c. 198

Cancellation  
of licence

**27.**—(1) The Registrar may cancel an operating licence,

- (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
- (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
- (c) in whole or in part at the request of the licensee.

Suspension  
or cancel-  
lation of  
licence

(2) The Registrar may suspend or cancel an operating licence in whole or in part where,

- (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the regulations, any Act referred to in clause 6 (4) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted

by the licence will not be carried on in accordance with this Act or the regulations;

- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service;
- (c) the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence or of meeting the licensee's financial responsibilities to users of the services; or
- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.

(3) The Registrar may cancel a bill of lading exemption of any holder of an operating licence who does not comply with subsection 19 (8) (access to records) or whose records do not disclose the information that is required in a bill of lading or way bill.

Cancellation  
of bill of  
lading  
exemption  
certificate

**28.—**(1) Where the Registrar proposes to suspend or cancel an operating licence, in whole or in part, to suspend, amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Registrar shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

Notice of  
proposal to  
cancel, etc.

(2) Every person who is served with a notice under subsection (1) and serves on the Registrar and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

Right to  
hearing

(3) Where the Registrar does not receive a request for a hearing as provided in subsection (2), the Registrar may, on the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

Where no  
hearing  
requested

(4) For the purpose of subsection (1), a notice that is mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Registrar shall be deemed to have been served on the third day after the day of mailing.

Service



Extension of  
time

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteen-day period, and may give such directions as it considers proper consequent upon the extension.

Parties

(6) The Registrar, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Efforts to  
comply

(7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Opportunity  
to examine  
evidence

(8) The Registrar shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Recommendations of  
Board

(9) The Board shall, after a hearing under this section, make a report to the Registrar, setting out its findings of fact, conclusions of law and recommendations.

Decision  
subsequent to  
report

(10) The Registrar, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he or she does so, shall give written reasons for the decision to the licensee or holder or, where the Registrar decides not to carry out the proposal, he or she shall so advise the licensee or certificate holder.

Refusing or  
withdrawing  
privileges

**29.—(1)** The Registrar may,

- (a) despite subsection 11 (1), refuse to issue a certificate of intercorporate exemption;
- (b) despite subsection 13 (1), refuse to issue a trip permit; or
- (c) suspend an operating licence,

where the applicant or holder is indebted to the Treasurer of the Province of Ontario in respect of a fee related to the issuance of a certificate, licence or permit.

No right to  
hearing

(2) Subsections 28 (1) and (2) do not apply in respect of a licence suspended under clause (1) (c).

(3) Where a cheque tendered as payment for any fee or tax is dishonoured, interest may be charged on the amount of the cheque and a penalty and administrative fee may be imposed.

Dishonoured  
cheques

(4) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) providing for the payment of administrative fees for reinstating suspended operating licences;
- (b) providing for the payment of administrative fees for handling dishonoured cheques;
- (c) prescribing for the purpose of subsection (3), the rate of interest, when interest starts to run and the method of calculating the amount of interest;
- (d) prescribing penalties for the purposes of subsection (3) and the method of determining the amount of any penalty.

**30.**—(1) The Registrar may at any time refer an operating licence to the Board where, in the opinion of the Registrar, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Registrar and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Referral to  
Board where  
uncertainty

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Registrar shall issue an amended operating licence in the form recommended by the Board.

Issue of  
clarified  
licence

**31.** Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

Confiden-  
tiality

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations or of the *Motor Vehicle Transport Act* (Canada);
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

R.S.C. 1970,  
c. M-14

Cancellation  
of licence by  
Registrar

**32.** Where the Registrar receives a report under subsection 5 (3) or (4) or information that leads the Registrar to conclude that a report should have been made under subsection 5 (3) or (4), the Registrar shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Registrar shall cancel the operating licence.

Penalty

**33.**—(1) Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500.

Idem

(2) Every person who knowingly makes a false statement in an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Licensee  
vicariously  
liable

**34.** Any licensee may be charged with and convicted of an offence under this Act or the regulations for which the driver of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

Consent to  
prosecute

**35.** No prosecution shall be instituted under this Act without the prior consent of an officer.

Advisory  
Committee  
on Truck  
Transportation

**36.**—(1) There shall be a committee to be known as the Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Members

(2) The Minister shall appoint the members of the Committee for such terms as the Minister determines and in making the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Chairman  
and vice-  
chairman

(3) The Minister shall designate a chairman and a vice-chairman from among the members appointed.

Vacancies

(4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Function of  
Committee

(5) The function of the Committee is to advise and make recommendations to the Minister on,

- (a) the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;
- (b) any matter concerning the transportation of goods in commercial vehicles; and
- (c) the degree to which the public interest test is necessary to advance the objectives of section 2.

**37.**—(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

Policy  
statements

(2) Every policy statement made under subsection (1) shall be published in *The Ontario Gazette*.

Publication

**38.**—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister.

Ministerial  
directions to  
investigate

(2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary.

Hearings

**39.** Section 22 of the *Ontario Highway Transport Board Act* does not apply to an order or decision of the Board under this Act.

Non-appli-  
cation of  
R.S.O. 1980,  
c. 338

**40.**—(1) Every operating licence issued to a licensee under the *Public Commercial Vehicles Act* or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee.

One valid  
licence only  
R.S.O. 1980,  
c. 407

(2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1).

Amending  
licence

**41.**—(1) The Lieutenant Governor in Council may make regulations,

Regulations

1. prescribing classes of licences, licensees and authorities;
2. prescribing fees and the basis for computing fees and providing for the payment thereof;



3. prescribing conditions and limitations to which licences, authorities, permits and certificates of intercorporate exemptions shall be subject;
4. prescribing the contents of and the information to be contained in bills of lading and prescribing different contents and information for bills of lading issued by various classes of licensees;
5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
13. prescribing and providing for the information to be marked on articles covered by a bill of lading issued by licensees and exempting any class of licensees from any provision so prescribed or provided;
14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;

15. prescribing classes of operating authorities for the purposes of subsection 7 (11);
16. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
17. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
18. governing the issue and renewal of operating licences;
19. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
20. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
21. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
22. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
23. prescribing the contents of documents and financial statements and providing for their filing with the Registrar or the Board;
24. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;
25. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;

26. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;
27. providing for the delegation to an officer of the Ministry of such of the powers and duties of the Registrar as may be considered necessary;
28. respecting any matter or thing that is required or permitted to be prescribed under this Act.

Idem (2) Any regulation may be general or particular in its application.

Adoption of codes, etc. (3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted.

Transition R.S.O. 1980, c. 407 **42.**—(1) An operating licence issued pursuant to a certificate of public necessity and convenience under section 10b of the *Public Commercial Vehicles Act* shall be deemed to be an operating licence for the purpose of this Act.

Idem (2) An operating licence or a freight forwarder's licence issued under the *Public Commercial Vehicles Act*, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act during the eighteen-month period starting on the implementation date unless cancelled sooner by the operation of section 40.

Idem (3) A certificate of intercorporate exemption issued under section 4a of the *Public Commercial Vehicles Act* shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act.

Limitation re R.S.O. 1980, c. 407, subs. 6 (1) (4) Subsection 6 (1) of the *Public Commercial Vehicles Act* does not apply where the application for the licence is made after the implementation date.

**43.**—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section 10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, the *Public Commercial Vehicles Amendment Act, 1981*, being chapter 71, the *Public Commercial Vehicles Amendment Act, 1983*, being chapter 79, the *Public Commercial Vehicles Amendment Act, 1984*, being chapter 20 and the *Public Commercial Vehicles Amendment Act, 1986*, being chapter 11, are repealed eighteen months after the implementation date.

**44.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**45.** The short title of this Act is the *Truck Transportation Act, 1988*. Short title









# Bill 89

## An Act requiring municipalities to establish Programs for the Recycling of Garbage

Mrs. Marland



*1st Reading*      December 17th, 1987

*2nd Reading*

*3rd Reading*

*Royal Assent*



## EXPLANATORY NOTES

The purpose of the Bill is to require all municipalities to establish and implement programs for the separation at source and recycling of garbage. The Bill sets out the required elements of programs and allows councils of municipalities to include, in programs, other elements considered necessary.

A municipality can establish and implement a separation at source and recycling program either on its own or jointly with other municipalities. A municipality will report annually to the Minister on the results of its program.

# Bill 89

1987

## An Act requiring municipalities to establish Programs for the Recycling of Garbage

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### 1. In this Act,

Definitions

“Minister” means the Minister of Municipal Affairs;

“municipality” means municipality as defined in section 1 of the *Municipal Act*;

R.S.O. 1980,  
c. 302

“program” means a separation at source and recycling program established by a municipality under subsection 2 (1);

“recyclable garbage” means discarded metal and glass containers for food or beverages and discarded newspapers.

**2.—**(1) The council of a municipality shall, by by-law, establish and implement the program described in subsection (2) for the separation at source and recycling of all recyclable garbage by residents in that municipality.

Municipalities  
to establish  
recycling  
programs

(2) The separation at source and recycling program shall include,

Elements of  
recycling  
program

- (a) the provision of educational material on the program for the residents of the municipality;
- (b) the provision of receptacles for use by residents for at least three different elements of recyclable garbage; and
- (c) any other matter that the council determines is necessary for the establishment and implementation of the program.

Joint  
programs

**3.** The councils of two or more municipalities may enter into an agreement for the establishment and implementation of a joint program.

Report to  
Minister

**4.**—(1) Every municipality shall make an annual report, on or before the 1st day of November, to the Minister on the program established by the municipality.

Contents of  
report

(2) The report shall include,

- (a) the percentage of total garbage in the municipality recycled under the program; and
- (b) the rate of compliance to the program in the municipality.

Commence-  
ment

**5.** This Act comes into force on the 1st day of January, 1989.

Short title

**6.** The short title of this Act is the *Garbage Recycling Programs Act, 1987*.

Bill 90

Government Bill

Projet de loi 90

du gouvernement

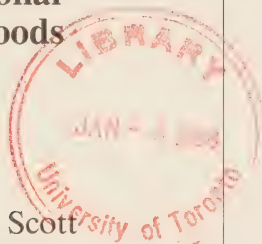
1<sup>ST</sup> SESSION, 34<sup>TH</sup> LEGISLATURE, ONTARIO  
36 ELIZABETH II, 1987

1<sup>re</sup> SESSION, 34<sup>e</sup> LÉGISLATURE, ONTARIO  
36 ELIZABETH II, 1987

## Bill 90

**An Act respecting the  
United Nations Convention  
on Contracts  
for the  
International  
Sale of Goods**

The Hon. I. Scott  
*Attorney General*



## Projet de loi 90

**Loi concernant la  
Convention des Nations  
Unies sur les  
contrats de vente  
internationale de  
marchandises**

L'honorable I. Scott  
*procureur général*

*1st Reading*    December 21st, 1987  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

*1<sup>re</sup> lecture*    21 décembre 1987  
*2<sup>e</sup> lecture*  
*3<sup>e</sup> lecture*  
*sanction royale*

## EXPLANATORY NOTES

The Bill implements the United Nations Convention on contracts for the international sale of goods. The Convention provides rules for the formation of international contracts for the sale of goods and for the rights and obligations of the buyer and the seller.

The Convention will become part of the law of Ontario approximately one year after Canada accedes to the Convention. It will apply to most contracts for the sale of goods involving a party that has its place of business in Ontario and another party that has its place of business in a country other than Canada. Parties to a contract to which the Convention would otherwise apply may exclude its application by expressly providing in the contract that another local law applies or that the Convention does not apply to it.

The text of the Convention is set out in the Schedule to the Bill.



## NOTES EXPLICATIVES

Le projet de loi met en application la Convention des Nations Unies sur les contrats de vente internationale de marchandises. La Convention prévoit des règles concernant la formation de contrats internationaux de vente de marchandises, ainsi que les droits et obligations du vendeur et de l'acheteur.

La Convention fera partie des lois de l'Ontario un an environ après que le Canada y a adhéré. Elle s'appliquera à la plupart des contrats de vente de marchandises entre une partie qui a son établissement en Ontario et une autre qui a son établissement dans un pays autre que le Canada. Les parties à un contrat auquel s'appliquerait la Convention peuvent exclure son application en prévoyant expressément dans le contrat qu'un autre droit local s'y applique ou que la Convention ne s'y applique pas.

Le texte de la Convention est reproduit à l'annexe du projet de loi.

**Bill 90****1987****An Act respecting the United Nations Convention  
on Contracts for the  
International Sale of Goods**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition  
“Conven-  
tion”

**1.** In this Act, “Convention” means the United Nations Convention on Contracts for the International Sale of Goods set out in the Schedule.

Declaration  
of  
Government  
of Canada

**2.** The Attorney General shall request the Government of Canada to declare in accordance with article 93 of the Convention that the Convention extends to Ontario.

Convention  
in force

**3.** On the date the Convention comes into force in Canada in accordance with article 99 of the Convention, the Convention comes into force in Ontario.

Publication

**4.** The Attorney General shall cause to be published in *The Ontario Gazette* the date the Convention comes into force in Ontario.

This Act  
prevails

**5.** Where there is a conflict between this Act and any other enactment, this Act prevails.

Exclusion of  
Convention

**6.** Parties to a contract to which the Convention would otherwise apply may exclude its application by expressly providing in the contract that the local domestic law of Ontario or another jurisdiction applies to it or that the Convention does not apply to it.

Commence-  
ment

**7.** This Act comes into force on the day it receives Royal Assent.

Short title

**8.** The short title of this Act is the *International Sale of Goods Act, 1987*.

Projet de loi 90

1987

Loi concernant la Convention des Nations  
Unies sur les contrats de vente  
internationale de marchandises

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

- 1** Dans la présente loi, «Convention» s'entend de la Convention des Nations Unies sur les contrats de vente internationale de marchandises, dont le texte est reproduit à l'annexe.

Définition  
«Convention»
- 2** Le procureur général demande au gouvernement du Canada de déclarer, en conformité avec l'article 93 de la Convention, que celle-ci s'applique à l'Ontario.

Déclaration  
du  
gouvernement  
du Canada
- 3** À la date d'entrée en vigueur de la Convention au Canada, en conformité avec son article 99, celle-ci entre en vigueur en Ontario.

Convention  
en vigueur
- 4** Le procureur général fait publier dans la *Gazette de l'Ontario* la date d'entrée en vigueur de la Convention en Ontario.

Publication
- 5** La présente loi l'emporte sur tout autre texte législatif incompatible.

La présente  
loi l'emporte
- 6** Les parties à un contrat auquel s'appliquerait la Convention peuvent exclure son application en prévoyant expressément dans le contrat que le droit interne local de l'Ontario ou d'un autre ressort s'y applique ou que la Convention ne s'y applique pas.

Exclusion de  
la Convention
- 7** La présente loi entre en vigueur le jour où elle reçoit la sanction royale.

Entrée en  
vigueur
- 8** Le titre abrégé de la présente loi est *Loi de 1987 sur la vente internationale de marchandises*.

Titre abrégé

## SCHEDULE

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE  
INTERNATIONAL SALE OF GOODS

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED as follows:

## PART I

## SPHERE OF APPLICATION AND GENERAL PROVISIONS

*CHAPTER I*

## SPHERE OF APPLICATION

*Article 1*

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

*Article 2*

This Convention does not apply to sales:

## ANNEXE

CONVENTION DES NATIONS UNIES SUR LES CONTRATS DE  
VENTE INTERNATIONALE DE MARCHANDISES

LES ÉTATS PARTIES À LA PRÉSENTE CONVENTION,

AYANT PRÉSENTS À L'ESPRIT les objectifs généraux inscrits dans les résolutions relatives à l'instauration d'un nouvel ordre économique international que l'Assemblée générale a adoptées à sa sixième session extraordinaire,

CONSIDÉRANT que le développement du commerce international sur la base de l'égalité et des avantages mutuels est un élément important dans la promotion de relations amicales entre les États,

ESTIMANT que l'adoption de règles uniformes applicables aux contrats de vente internationale de marchandises et compatibles avec les différents systèmes sociaux, économiques et juridiques contribuera à l'élimination des obstacles juridiques aux échanges internationaux et favorisera le développement du commerce international,

SONT CONVENUS de ce qui suit :

## PREMIÈRE PARTIE

## CHAMP D'APPLICATION ET DISPOSITIONS GÉNÉRALES

## CHAPITRE I

## CHAMP D'APPLICATION

*Article Premier*

1) La présente Convention s'applique aux contrats de vente de marchandises entre des parties ayant leur établissement dans des États différents :

- a) lorsque ces États sont des États contractants; ou
- b) lorsque les règles du droit international privé mènent à l'application de la loi d'un État contractant.

2) Il n'est pas tenu compte du fait que les parties ont leur établissement dans des États différents lorsque ce fait ne ressort ni du contrat, ni de transactions antérieures entre les parties, ni de renseignements donnés par elles à un moment quelconque avant la conclusion ou lors de la conclusion du contrat.

3) Ni la nationalité des parties ni le caractère civil ou commercial des parties ou du contrat ne sont pris en considération pour l'application de la présente Convention.

*Article 2*

La présente Convention ne régit pas les ventes :



- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

#### *Article 3*

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

#### *Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

#### *Article 5*

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

#### *Article 6*

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

- a) de marchandises achetées pour un usage personnel, familial ou domestique, à moins que le vendeur, à un moment quelconque avant la conclusion ou lors de la conclusion du contrat, n'ait pas su et n'ait pas été censé savoir que ces marchandises étaient achetées pour un tel usage;
- b) aux enchères;
- c) sur saisie ou de quelque autre manière par autorité de justice;
- d) de valeurs mobilières, effets de commerce et monnaies;
- e) de navires, bateaux, aéroglisseurs et aéronefs;
- f) d'électricité.

#### *Article 3*

1) Sont réputés ventes les contrats de fourniture de marchandises à fabriquer ou à produire, à moins que la partie qui commande celles-ci n'ait à fournir une part essentielle des éléments matériels nécessaires à cette fabrication ou production.

2) La présente Convention ne s'applique pas aux contrats dans lesquels la part prépondérante de l'obligation de la partie qui fournit les marchandises consiste en une fourniture de main-d'oeuvre ou d'autres services.

#### *Article 4*

La présente Convention régit exclusivement la formation du contrat de vente et les droits et obligations qu'un tel contrat fait naître entre le vendeur et l'acheteur. En particulier, sauf disposition contraire expresse de la présente Convention, celle-ci ne concerne pas :

- a) la validité du contrat ni celle d'aucune de ses clauses non plus que celle des usages;
- b) les effets que le contrat peut avoir sur la propriété des marchandises vendues.

#### *Article 5*

La présente Convention ne s'applique pas à la responsabilité du vendeur pour décès ou lésions corporelles causés à quiconque par les marchandises.

#### *Article 6*

Les parties peuvent exclure l'application de la présente Convention ou, sous réserve des dispositions de l'article 12, déroger à l'une quelconque de ses dispositions ou en modifier les effets.

*CHAPTER II*

## GENERAL PROVISIONS

*Article 7*

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

*Article 8*

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

*Article 9*

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

*Article 10*

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

*CHAPITRE II*

## DISPOSITIONS GÉNÉRALES

*Article 7*

1) Pour l'interprétation de la présente Convention, il sera tenu compte de son caractère international et de la nécessité de promouvoir l'uniformité de son application ainsi que d'assurer le respect de la bonne foi dans le commerce international.

2) Les questions concernant les matières régies par la présente Convention et qui ne sont pas expressément tranchées par elle seront réglées selon les principes généraux dont elle s'inspire ou, à défaut de ces principes, conformément à la loi applicable en vertu des règles du droit international privé.

*Article 8*

1) Aux fins de la présente Convention, les indications et les autres comportements d'une partie doivent être interprétés selon l'intention de celle-ci lorsque l'autre partie connaissait ou ne pouvait ignorer cette intention.

2) Si le paragraphe précédent n'est pas applicable, les indications et autres comportements d'une partie doivent être interprétés selon le sens qu'une personne raisonnable de même qualité que l'autre partie, placée dans la même situation, leur aurait donné.

3) Pour déterminer l'intention d'une partie ou ce qu'aurait compris une personne raisonnable, il doit être tenu compte des circonstances pertinentes, notamment des négociations qui ont pu avoir lieu entre les parties, des habitudes qui se sont établies entre elles, des usages et de tout comportement ultérieur des parties.

*Article 9*

1) Les parties sont liées par les usages auxquels elles ont consenti et par les habitudes qui se sont établies entre elles.

2) Sauf convention contraire des parties, celles-ci sont réputées s'être tacitement référées dans le contrat et pour sa formation à tout usage dont elles avaient connaissance ou auraient dû avoir connaissance et qui, dans le commerce international, est largement connu et régulièrement observé par les parties à des contrats de même type dans la branche commerciale considérée.

*Article 10*

Aux fins de la présente Convention :

- a) si une partie a plus d'un établissement, l'établissement à prendre en considération est celui qui a la relation la plus étroite avec le contrat et son exécution eu égard aux circonstances connues des parties ou envisagées par elles à un moment quelconque avant la conclusion ou lors de la conclusion du contrat;
- b) si une partie n'a pas d'établissement, sa résidence habituelle en tient lieu.

*Article 11*

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

*Article 12*

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

*Article 13*

For the purposes of this Convention "writing" includes telegram and telex.

## PART II

## FORMATION OF THE CONTRACT

*Article 14*

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

*Article 15*

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

*Article 16*

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

- (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or



*Article 11*

Le contrat de vente n'a pas à être conclu ni constaté par écrit et n'est soumis à aucune autre condition de forme. Il peut être prouvé par tous moyens, y compris par témoins.

*Article 12*

Toute disposition de l'article 11, de l'article 29 ou de la deuxième partie de la présente Convention autorisant une forme autre que la forme écrite, soit pour la conclusion ou pour la modification ou la résiliation amiable d'un contrat de vente, soit pour toute offre, acceptation ou autre manifestation d'intention, ne s'applique pas dès lors qu'une des parties a son établissement dans un État contractant qui a fait une déclaration conformément à l'article 96 de la présente Convention. Les parties ne peuvent déroger au présent article ni en modifier les effets.

*Article 13*

Aux fins de la présente Convention, le terme «écrit» doit s'entendre également des communications adressées par télégramme ou par télex.

## DEUXIÈME PARTIE

## FORMATION DU CONTRAT

*Article 14*

1) Une proposition de conclure un contrat adressée à une ou plusieurs personnes déterminées constitue une offre si elle est suffisamment précise et si elle indique la volonté de son auteur d'être lié en cas d'acceptation. Une proposition est suffisamment précise lorsqu'elle désigne les marchandises et, expressément ou implicitement, fixe la quantité et le prix ou donne des indications permettant de les déterminer.

2) Une proposition adressée à des personnes indéterminées est considérée seulement comme une invitation à l'offre, à moins que la personne qui a fait la proposition n'ait clairement indiqué le contraire.

*Article 15*

1) Une offre prend effet lorsqu'elle parvient au destinataire.

2) Une offre, même si elle est irrévocable, peut être rétractée si la rétractation parvient au destinataire avant ou en même temps que l'offre.

*Article 16*

1) Jusqu'à ce qu'un contrat ait été conclu, une offre peut être révoquée si la révocation parvient au destinataire avant que celui-ci ait expédié une acceptation.

2) Cependant, une offre ne peut être révoquée :

- a) si elle indique, en fixant un délai déterminé pour l'acceptation, ou autrement, qu'elle est irrévocable; ou

- (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

*Article 17*

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

*Article 18*

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

*Article 19*

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

*Article 20*

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

- b) s'il était raisonnable pour le destinataire de considérer l'offre comme irrévocable et s'il a agi en conséquence.

#### *Article 17*

Une offre, même irrévocable, prend fin lorsque son rejet parvient à l'auteur de l'offre.

#### *Article 18*

1) Une déclaration ou autre comportement du destinataire indiquant qu'il acquiesce à une offre constitue une acceptation. Le silence ou l'inaction à eux seuls ne peuvent valoir acceptation.

2) L'acceptation d'une offre prend effet au moment où l'indication d'acquiescement parvient à l'auteur de l'offre. L'acceptation ne prend pas effet si cette indication ne parvient pas à l'auteur de l'offre dans le délai qu'il a stipulé ou, à défaut d'une telle stipulation, dans un délai raisonnable, compte tenu des circonstances de la transaction et de la rapidité des moyens de communication utilisés par l'auteur de l'offre. Une offre verbale doit être acceptée immédiatement, à moins que les circonstances n'impliquent le contraire.

3) Cependant, si, en vertu de l'offre, des habitudes qui se sont établies entre les parties ou des usages, le destinataire de l'offre peut indiquer qu'il acquiesce en accomplissant un acte se rapportant, par exemple, à l'expédition des marchandises ou au paiement du prix, sans communication à l'auteur de l'offre, l'acceptation prend effet au moment où cet acte est accompli, pour autant qu'il le soit dans les délais prévus par le paragraphe précédent.

#### *Article 19*

1) Une réponse qui tend à être l'acceptation d'une offre, mais qui contient des additions, des limitations ou autres modifications, est un rejet de l'offre et constitue une contre-offre.

2) Cependant, une réponse qui tend à être l'acceptation d'une offre, mais qui contient des éléments complémentaires ou différents n'altérant pas substantiellement les termes de l'offre, constitue une acceptation, à moins que l'auteur de l'offre, sans retard injustifié, n'en relève les différences verbalement ou n'adresse un avis à cet effet. S'il ne le fait pas, les termes du contrat sont ceux de l'offre, avec les modifications comprises dans l'acceptation.

3) Des éléments complémentaires ou différents relatifs notamment au prix, au paiement, à la qualité et à la quantité des marchandises, au lieu et au moment de la livraison, à l'étendue de la responsabilité d'une partie à l'égard de l'autre ou au règlement des différends, sont considérés comme altérant substantiellement les termes de l'offre.

#### *Article 20*

1) Le délai d'acceptation fixé par l'auteur de l'offre dans un télégramme ou une lettre commence à courir au moment où le télégramme est remis pour expédition ou à la date qui apparaît sur la lettre ou, à défaut, à la date qui apparaît sur l'enveloppe. Le délai d'acceptation que l'auteur de l'offre fixe par téléphone, par télex ou par d'autres moyens de communication instantanés commence à courir au moment où l'offre parvient au destinataire.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

#### *Article 21*

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

#### *Article 22*

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

#### *Article 23*

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

#### *Article 24*

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

### PART III

### SALE OF GOODS

#### *CHAPTER I*

#### GENERAL PROVISIONS

#### *Article 25*

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

2) Les jours fériés ou chômés qui tombent pendant que court le délai d'acceptation sont comptés dans le calcul de ce délai. Cependant, si la notification ne peut être remise à l'adresse de l'auteur de l'offre le dernier jour du délai, parce que celui-ci tombe un jour férié ou chômé au lieu d'établissement de l'auteur de l'offre, le délai est prorogé jusqu'au premier jour ouvrable suivant.

#### *Article 21*

1) Une acceptation tardive produit néanmoins effet en tant qu'acceptation si, sans retard, l'auteur de l'offre en informe verbalement le destinataire ou lui adresse un avis à cet effet.

2) Si la lettre ou autre écrit contenant une acceptation tardive révèle qu'elle a été expédiée dans des conditions telles que, si sa transmission avait été régulière, elle serait parvenue à temps à l'auteur de l'offre, l'acceptation tardive produit effet en tant qu'acceptation à moins que, sans retard, l'auteur de l'offre n'informe verbalement le destinataire de l'offre qu'il considère que son offre avait pris fin ou qu'il ne lui adresse un avis à cet effet.

#### *Article 22*

L'acceptation peut être rétractée si la rétractation parvient à l'auteur de l'offre avant le moment où l'acceptation aurait pris effet ou à ce moment.

#### *Article 23*

Le contrat est conclu au moment où l'acceptation d'une offre prend effet conformément aux dispositions de la présente Convention.

#### *Article 24*

Aux fins de la présente partie de la Convention, une offre, une déclaration d'acceptation ou toute autre manifestation d'intention «parvient» à son destinataire lorsqu'elle lui est faite verbalement ou est délivrée par tout autre moyen au destinataire lui-même, à son établissement, à son adresse postale ou, s'il n'a pas d'établissement ou d'adresse postale, à sa résidence habituelle.

### TROISIÈME PARTIE

#### VENTE DE MARCHANDISES

##### CHAPITRE I

#### DISPOSITIONS GÉNÉRALES

#### *Article 25*

Une contravention au contrat commise par l'une des parties est essentielle lorsqu'elle cause à l'autre partie un préjudice tel qu'elle la prive substantiellement de ce que celle-ci était en droit d'attendre du contrat, à moins que la partie en défaut n'ait pas prévu un tel résultat et qu'une personne raisonnable de même qualité placée dans la même situation ne l'aurait pas prévu non plus.



*Article 26*

A declaration of avoidance of the contract is effective only if made by notice to the other party.

*Article 27*

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

*Article 28*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

*Article 29*

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

*CHAPTER II**OBLIGATIONS OF THE SELLER**Article 30*

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

*Section I. Delivery of the goods and handing over of documents**Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

*Article 26*

Une déclaration de résolution du contrat n'a d'effet que si elle est faite par notification à l'autre partie.

*Article 27*

Sauf disposition contraire expresse de la présente partie de la Convention, si une notification, demande ou autre communication est faite par une partie au contrat conformément à la présente partie et par un moyen approprié aux circonstances, un retard ou une erreur dans la transmission de la communication ou le fait qu'elle n'est pas arrivée à destination ne prive pas cette partie au contrat du droit de s'en prévaloir.

*Article 28*

Si, conformément aux dispositions de la présente Convention, une partie a le droit d'exiger de l'autre l'exécution d'une obligation, un tribunal n'est tenu d'ordonner l'exécution en nature que s'il le ferait en vertu de son propre droit pour des contrats de vente semblables non régis par la présente Convention.

*Article 29*

1) Un contrat peut être modifié ou résilié par accord amiable entre les parties.

2) Un contrat écrit qui contient une disposition stipulant que toute modification ou résiliation amiable doit être faite par écrit ne peut être modifié ou résilié à l'amiable sous une autre forme. Toutefois, le comportement de l'une des parties peut l'empêcher d'invoquer une telle disposition si l'autre partie s'est fondée sur ce comportement.

*CHAPITRE II**OBLIGATIONS DU VENDEUR**Article 30*

Le vendeur s'oblige, dans les conditions prévues au contrat et par la présente Convention, à livrer les marchandises, à en transférer la propriété et, s'il y a lieu, à remettre les documents s'y rapportant.

*Section I. Livraison des marchandises et remise des documents.**Article 31*

Si le vendeur n'est pas tenu de livrer les marchandises en un autre lieu particulier son obligation de livraison consiste :

- a) lorsque le contrat de vente implique un transport des marchandises, à remettre les marchandises au premier transporteur pour transmission à l'acheteur;

- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;
- (c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

#### *Article 32*

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

#### *Article 33*

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

#### *Article 34*

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

- b) lorsque, dans les cas non visés au précédent alinéa, le contrat porte sur un corps certain ou sur une chose de genre qui doit être prélevée sur une masse déterminée ou qui doit être fabriquée ou produite et lorsque, au moment de la conclusion du contrat, les parties savaient que les marchandises se trouvaient ou devaient être fabriquées ou produites en un lieu particulier, à mettre les marchandises à la disposition de l'acheteur en ce lieu;
- c) dans les autres cas, à mettre les marchandises à la disposition de l'acheteur au lieu où le vendeur avait son établissement au moment de la conclusion du contrat.

#### *Article 32*

1) Si, conformément au contrat ou à la présente Convention, le vendeur remet les marchandises à un transporteur et si les marchandises ne sont pas clairement identifiées aux fins du contrat par l'apposition d'un signe distinctif sur les marchandises, par des documents de transport ou par tout autre moyen, le vendeur doit donner à l'acheteur avis de l'expédition en désignant spécifiquement les marchandises.

2) Si le vendeur est tenu de prendre des dispositions pour le transport des marchandises, il doit conclure les contrats nécessaires pour que le transport soit effectué jusqu'au lieu prévu, par les moyens de transport appropriés aux circonstances et selon les conditions usuelles pour un tel transport.

3) Si le vendeur n'est pas tenu de souscrire lui-même une assurance de transport, il doit fournir à l'acheteur, à la demande de celui-ci, tous renseignements dont il dispose qui sont nécessaires à la conclusion de cette assurance.

#### *Article 33*

Le vendeur doit livrer les marchandises :

- a) si une date est fixée par le contrat ou déterminable par référence au contrat, à cette date;
- b) si une période de temps est fixée par le contrat ou déterminable par référence au contrat, à un moment quelconque au cours de cette période, à moins qu'il ne résulte des circonstances que c'est à l'acheteur de choisir une date; ou
- c) dans tous les autres cas, dans un délai raisonnable à partir de la conclusion du contrat.

#### *Article 34*

Si le vendeur est tenu de remettre les documents se rapportant aux marchandises, il doit s'acquitter de cette obligation au moment, au lieu et dans la forme prévue au contrat. En cas de remise anticipée, le vendeur conserve, jusqu'au moment prévu pour la remise, le droit de réparer tout défaut de conformité des documents, à condition que l'exercice de ce droit ne cause à l'acheteur ni inconvénient ni frais déraisonnables. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

Section II. *Conformity of the goods and third party claims*

*Article 35*

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

*Article 36*

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

*Article 37*

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

*Article 38*

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.



Section II. *Conformité des marchandises et droits ou prétentions de tiers.*

*Article 35*

1) Le vendeur doit livrer des marchandises dont la quantité, la qualité et le type répondent à ceux qui sont prévus au contrat, et dont l'emballage ou le conditionnement correspond à celui qui est prévu au contrat.

2) À moins que les parties n'en soient convenues autrement, les marchandises ne sont conformes au contrat que si :

- a) elles sont propres aux usages auxquels serviraient habituellement des marchandises du même type;
- b) elles sont propres à tout usage spécial qui a été porté expressément ou tacitement à la connaissance du vendeur au moment de la conclusion du contrat, sauf s'il résulte des circonstances que l'acheteur ne s'en est pas remis à la compétence ou à l'appréciation du vendeur ou qu'il n'était pas raisonnable de sa part de le faire;
- c) elles possèdent les qualités d'une marchandise que le vendeur a présentée à l'acheteur comme échantillon ou modèle;
- d) elles sont emballées ou conditionnées selon le mode habituel pour les marchandises du même type ou, à défaut de mode habituel, d'une manière propre à les conserver et à les protéger.

3) Le vendeur n'est pas responsable, au regard des alinéas a) à d) du paragraphe précédent, d'un défaut de conformité que l'acheteur connaissait ou ne pouvait ignorer au moment de la conclusion du contrat.

*Article 36*

1) Le vendeur est responsable, conformément au contrat et à la présente Convention, de tout défaut de conformité qui existe au moment du transfert des risques à l'acheteur, même si ce défaut n'apparaît qu'ultérieurement.

2) Le vendeur est également responsable de tout défaut de conformité qui survient après le moment indiqué au paragraphe précédent et qui est imputable à l'inexécution de l'une quelconque de ses obligations, y compris à un manquement à une garantie que, pendant une certaine période, les marchandises resteront propres à leur usage normal ou à un usage spécial ou conserveront des qualités ou caractéristiques spécifiées.

*Article 37*

En cas de livraison anticipée, le vendeur a le droit, jusqu'à la date prévue pour la livraison, soit de livrer une partie ou une quantité manquante, ou des marchandises nouvelles en remplacement des marchandises non conformes au contrat, soit de réparer tout défaut de conformité des marchandises, à condition que l'exercice de ce droit ne cause à l'acheteur ni inconvénients ni frais déraisonnables. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

*Article 38*

1) L'acheteur doit examiner les marchandises ou les faire examiner dans un délai aussi bref que possible eu égard aux circonstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

#### *Article 39*

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

#### *Article 40*

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

#### *Article 41*

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

#### *Article 42*

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

- (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or
- (b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

- (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

2) Si le contrat implique un transport des marchandises, l'examen peut être différé jusqu'à leur arrivée à destination.

3) Si les marchandises sont déroutées ou réexpédiées par l'acheteur sans que celui-ci ait eu raisonnablement la possibilité de les examiner et si, au moment de la conclusion du contrat, le vendeur connaissait ou aurait dû connaître la possibilité de ce déroutage ou de cette réexpédition, l'examen peut être différé jusqu'à l'arrivée des marchandises à leur nouvelle destination.

#### *Article 39*

1) L'acheteur est déchu du droit de se prévaloir d'un défaut de conformité s'il ne le dénonce pas au vendeur, en précisant la nature de ce défaut, dans un délai raisonnable à partir du moment où il l'a constaté ou aurait dû le constater.

2) Dans tous les cas, l'acheteur est déchu du droit de se prévaloir d'un défaut de conformité, s'il ne le dénonce pas au plus tard dans un délai de deux ans à compter de la date à laquelle les marchandises lui ont été effectivement remises, à moins que ce délai ne soit incompatible avec la durée d'une garantie contractuelle.

#### *Article 40*

Le vendeur ne peut pas se prévaloir des dispositions des articles 38 et 39 lorsque le défaut de conformité porte sur des faits qu'il connaissait ou ne pouvait ignorer et qu'il n'a pas révélés à l'acheteur.

#### *Article 41*

Le vendeur doit livrer les marchandises libres de tout droit ou prétention d'un tiers, à moins que l'acheteur n'accepte de prendre les marchandises dans ces conditions. Toutefois, si ce droit ou cette prétention est fondée sur la propriété industrielle ou autre propriété intellectuelle, l'obligation du vendeur est régie par l'article 42.

#### *Article 42*

1) Le vendeur doit livrer les marchandises libres de tout droit ou prétention d'un tiers fondé sur la propriété industrielle ou autre propriété intellectuelle, qu'il connaissait ou ne pouvait ignorer au moment de la conclusion du contrat, à condition que ce droit ou cette prétention soit fondé sur la propriété industrielle ou autre propriété intellectuelle :

- a) en vertu de la loi de l'État où les marchandises doivent être revendues ou utilisées, si les parties ont envisagé au moment de la conclusion du contrat que les marchandises seraient revendues ou utilisées dans cet État; ou
- b) dans tous les autres cas, en vertu de la loi de l'État où l'acheteur a son établissement.

2) Dans les cas suivants, le vendeur n'est pas tenu de l'obligation prévue au paragraphe précédent :

- a) au moment de la conclusion du contrat, l'acheteur connaissait ou ne pouvait ignorer l'existence du droit ou de la prétention; ou

- (b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

*Article 43*

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

*Article 44*

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III. *Remedies for breach of contract by the seller*

*Article 45*

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

- (a) exercise the rights provided in articles 46 to 52;
- (b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

*Article 46*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

- b) le droit ou la prétention résulte de ce que le vendeur s'est conformé aux plans techniques, dessins, formules ou autres spécifications analogues fournis par l'acheteur.

#### *Article 43*

1) L'acheteur perd le droit de se prévaloir des dispositions des articles 41 et 42 s'il ne dénonce pas au vendeur le droit ou la prétention du tiers, en précisant la nature de ce droit ou de cette prétention, dans un délai raisonnable à partir du moment où il en a eu connaissance ou aurait dû en avoir connaissance.

2) Le vendeur ne peut pas se prévaloir des dispositions du paragraphe précédent s'il connaissait le droit ou la prétention du tiers et sa nature.

#### *Article 44*

Nonobstant les dispositions du paragraphe 1 de l'article 39 et du paragraphe 1 de l'article 43, l'acheteur peut réduire le prix conformément à l'article 50 ou demander des dommages-intérêts, sauf pour le gain manqué, s'il a une excuse raisonnable pour n'avoir pas procédé à la dénonciation requise.

#### *Section III. Moyens dont dispose l'acheteur en cas de contravention au contrat par le vendeur.*

#### *Article 45*

1) Si le vendeur n'a pas exécuté l'une quelconque des obligations résultant pour lui du contrat de vente ou de la présente Convention, l'acheteur est fondé à :

- a) exercer les droits prévus aux articles 46 à 52;
- b) demander les dommages-intérêts prévus aux articles 74 à 77.

2) L'acheteur ne perd pas le droit de demander des dommages-intérêts lorsqu'il exerce son droit de recourir à un autre moyen.

3) Aucun délai de grâce ne peut être accordé au vendeur par un juge ou par un arbitre lorsque l'acheteur se prévaut d'un des moyens dont il dispose en cas de contravention au contrat.

#### *Article 46*

1) L'acheteur peut exiger du vendeur l'exécution de ses obligations, à moins qu'il ne se soit prévalu d'un moyen incompatible avec cette exigence.

2) Si les marchandises ne sont pas conformes au contrat, l'acheteur ne peut exiger du vendeur la livraison de marchandises de remplacement que si le défaut de conformité constitue une contravention essentielle au contrat et si cette livraison est demandée au moment de la dénonciation du défaut de conformité faite conformément à l'article 39 ou dans un délai raisonnable à compter de cette dénonciation.

3) Si les marchandises ne sont pas conformes au contrat, l'acheteur peut exiger du vendeur qu'il répare le défaut de conformité, à moins que cela ne soit déraisonnable compte tenu de toutes les circonstances. La réparation doit être demandée au moment de la dénonciation du défaut de conformité faite conformément à l'article 39 ou dans un délai raisonnable à compter de cette dénonciation.



*Article 47*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

*Article 48*

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

*Article 49*

(1) The buyer may declare the contract avoided:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

- (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
- (b) in respect of any breach other than late delivery, within a reasonable time:
  - (i) after he knew or ought to have known of the breach;

*Article 47*

1) L'acheteur peut impartir au vendeur un délai supplémentaire de durée raisonnable pour l'exécution de ses obligations.

2) À moins qu'il n'ait reçu du vendeur une notification l'informant que celui-ci n'exécuterait pas ses obligations dans le délai ainsi impartit, l'acheteur ne peut, avant l'expiration de ce délai, se prévaloir d'aucun des moyens dont il dispose en cas de contravention au contrat. Toutefois, l'acheteur ne perd pas, de ce fait, le droit de demander des dommages-intérêts pour retard dans l'exécution.

*Article 48*

1) Sous réserve de l'article 49, le vendeur peut, même après la date de la livraison, réparer à ses frais tout manquement à ses obligations, à condition que cela n'entraîne pas un retard déraisonnable et ne cause à l'acheteur ni inconvénients déraisonnables ni incertitude quant au remboursement par le vendeur des frais faits par l'acheteur. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

2) Si le vendeur demande à l'acheteur de lui faire savoir s'il accepte l'exécution et si l'acheteur ne lui répond pas dans un délai raisonnable, le vendeur peut exécuter ses obligations dans le délai qu'il a indiqué dans sa demande. L'acheteur ne peut, avant l'expiration de ce délai, se prévaloir d'un moyen incompatible avec l'exécution par le vendeur de ses obligations.

3) Lorsque le vendeur notifie à l'acheteur son intention d'exécuter ses obligations dans un délai déterminé, il est présumé demander à l'acheteur de lui faire connaître sa décision conformément au paragraphe précédent.

4) Une demande ou une notification faite par le vendeur en vertu des paragraphes 2 ou 3 du présent article n'a d'effet que si elle est reçue par l'acheteur.

*Article 49*

1) L'acheteur peut déclarer le contrat résolu :

- a) si l'inexécution par le vendeur de l'une quelconque des obligations résultant pour lui du contrat ou de la présente Convention constitue une contravention essentielle au contrat; ou
- b) en cas de défaut de livraison, si le vendeur ne livre pas les marchandises dans le délai supplémentaire impartit par l'acheteur conformément au paragraphe 1 de l'article 47 ou s'il déclare qu'il ne les livrera pas dans le délai ainsi impartit.

2) Cependant, lorsque le vendeur a livré les marchandises, l'acheteur est déchu du droit de déclarer le contrat résolu s'il ne l'a pas fait :

- a) en cas de livraison tardive, dans un délai raisonnable à partir du moment où il a su que la livraison avait été effectuée;
- b) en cas de contravention autre que la livraison tardive, dans un délai raisonnable :
  - (i) à partir du moment où il a eu connaissance ou aurait dû avoir connaissance de cette contravention;

- (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
- (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

#### *Article 50*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

#### *Article 51*

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

#### *Article 52*

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

### *CHAPTER III*

#### *OBLIGATIONS OF THE BUYER*

#### *Article 53*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

- (ii) après l'expiration de tout délai supplémentaire imparti par l'acheteur conformément au paragraphe 1 de l'article 47 ou après que le vendeur a déclaré qu'il n'exécuterait pas ses obligations dans ce délai supplémentaire; ou
- (iii) après l'expiration de tout délai supplémentaire indiqué par le vendeur conformément au paragraphe 2 de l'article 48 ou après que l'acheteur a déclaré qu'il n'accepterait pas l'exécution.

#### *Article 50*

En cas de défaut de conformité des marchandises au contrat, que le prix ait été ou non déjà payé, l'acheteur peut réduire le prix proportionnellement à la différence entre la valeur que les marchandises effectivement livrées avaient au moment de la livraison et la valeur que des marchandises conformes auraient eue à ce moment. Cependant, si le vendeur répare tout manquement à ses obligations conformément à l'article 37 ou à l'article 48 ou si l'acheteur refuse d'accepter l'exécution par le vendeur conformément à ces articles, l'acheteur ne peut réduire le prix.

#### *Article 51*

1) Si le vendeur ne livre qu'une partie des marchandises ou si une partie seulement des marchandises livrées est conforme au contrat, les articles 46 à 50 s'appliquent en ce qui concerne la partie manquante ou non conforme.

2) L'acheteur ne peut déclarer le contrat résolu dans sa totalité que si l'inexécution partielle ou le défaut de conformité constitue une contravention essentielle au contrat.

#### *Article 52*

1) Si le vendeur livre les marchandises avant la date fixée, l'acheteur a la faculté d'en prendre livraison ou de refuser d'en prendre livraison.

2) Si le vendeur livre une quantité supérieure à celle prévue au contrat, l'acheteur peut accepter ou refuser de prendre livraison de la quantité excédentaire. Si l'acheteur accepte d'en prendre livraison en tout ou en partie, il doit la payer au tarif du contrat.

### *CHAPITRE III*

#### **OBLIGATIONS DE L'ACHETEUR**

#### *Article 53*

L'acheteur s'oblige, dans les conditions prévues au contrat et par la présente Convention, à payer le prix et à prendre livraison des marchandises.

*Section I. Payment of the price**Article 54*

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

*Article 55*

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

*Article 56*

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

*Article 57*

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

*Article 58*

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.



*Section I. Paiement du prix.**Article 54*

L'obligation qu'a l'acheteur de payer le prix comprend celle de prendre les mesures et d'accomplir les formalités destinées à permettre le paiement du prix qui sont prévues par le contrat ou par les lois et les règlements.

*Article 55*

Si la vente est valablement conclue sans que le prix des marchandises vendues ait été fixé dans le contrat expressément ou implicitement ou par une disposition permettant de le déterminer, les parties sont réputées, sauf indications contraires, s'être tacitement référées au prix habituellement pratiqué au moment de la conclusion du contrat, dans la branche commerciale considérée, pour les mêmes marchandises vendues dans des circonstances comparables.

*Article 56*

Si le prix est fixé d'après le poids des marchandises, c'est le poids net qui, en cas de doute, détermine ce prix.

*Article 57*

1) Si l'acheteur n'est pas tenu de payer le prix en un autre lieu particulier, il doit payer le vendeur :

- a) à l'établissement de celui-ci; ou
- b) si le paiement doit être fait contre la remise des marchandises ou des documents, au lieu de cette remise.

2) Le vendeur doit supporter toute augmentation des frais accessoires au paiement qui résultent de son changement d'établissement après la conclusion du contrat.

*Article 58*

1) Si l'acheteur n'est pas tenu de payer le prix à un autre moment déterminé, il doit le payer lorsque, conformément au contrat et à la présente Convention, le vendeur met à sa disposition soit les marchandises soit des documents représentatifs des marchandises. Le vendeur peut faire du paiement une condition de la remise des marchandises ou des documents.

2) Si le contrat implique un transport des marchandises, le vendeur peut en faire l'expédition sous condition que celles-ci ou les documents représentatifs ne seront remis à l'acheteur que contre paiement du prix.

3) L'acheteur n'est pas tenu de payer le prix avant d'avoir eu la possibilité d'examiner les marchandises, à moins que les modalités de livraison ou de paiement dont sont convenues les parties ne lui en laissent pas la possibilité.

*Article 59*

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

*Section II. Taking delivery**Article 60*

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

*Section III. Remedies for breach of contract by the buyer**Article 61*

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

*Article 62*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

*Article 63*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

*Article 59*

L'acheteur doit payer le prix à la date fixée au contrat ou résultant du contrat et de la présente Convention, sans qu'il soit besoin d'aucune demande ou autre formalité de la part du vendeur.

*Section II. Prise de livraison.**Article 60*

L'obligation de l'acheteur de prendre livraison consiste :

- a) à accomplir tout acte qu'on peut raisonnablement attendre de lui pour permettre au vendeur d'effectuer la livraison; et
- b) à retirer les marchandises.

*Section III. Moyens dont dispose le vendeur en cas de contravention au contrat par l'acheteur.**Article 61*

1) Si l'acheteur n'a pas exécuté l'une quelconque des obligations résultant pour lui du contrat de vente ou de la présente Convention, le vendeur est fondé à :

- a) exercer les droits prévus aux articles 62 à 65;
- b) demander les dommages-intérêts prévus aux articles 74 à 77.

2) Le vendeur ne perd pas le droit de demander des dommages-intérêts lorsqu'il exerce son droit de recourir à un autre moyen.

3) Aucun délai de grâce ne peut être accordé à l'acheteur par un juge ou par un arbitre lorsque le vendeur se prévaut d'un des moyens dont il dispose en cas de contravention au contrat.

*Article 62*

Le vendeur peut exiger de l'acheteur le paiement du prix, la prise de livraison des marchandises ou l'exécution des autres obligations de l'acheteur, à moins qu'il ne se soit prévalu d'un moyen incompatible avec ces exigences.

*Article 63*

1) Le vendeur peut impartir à l'acheteur un délai supplémentaire de durée raisonnable pour l'exécution de ses obligations.

2) À moins qu'il n'ait reçu de l'acheteur une notification l'informant que celui-ci n'exécuterait pas ses obligations dans le délai ainsi imparti, le vendeur ne peut, avant l'expiration de ce délai, se prévaloir d'aucun des moyens dont il dispose en cas de contravention au contrat. Toutefois, le vendeur ne perd pas, de ce fait, le droit de demander des dommages-intérêts pour retard dans l'exécution.

*Article 64*

(1) The seller may declare the contract avoided:

- (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

- (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
- (b) in respect of any breach other than late performance by the buyer, within a reasonable time:
  - (i) after the seller knew or ought to have known of the breach; or
  - (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

*Article 65*

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

*CHAPTER IV**PASSING OF RISK**Article 66*

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

*Article 64*

1) Le vendeur peut déclarer le contrat résolu :

- a) si l'inexécution par l'acheteur de l'une quelconque des obligations résultant pour lui du contrat ou de la présente Convention constitue une contravention essentielle au contrat; ou
- b) si l'acheteur n'exécute pas son obligation de payer le prix ou ne prend pas livraison des marchandises dans le délai supplémentaire imparti par le vendeur conformément au paragraphe 1 de l'article 63 ou s'il déclare qu'il ne le fera pas dans le délai ainsi imparti.

2) Cependant, lorsque l'acheteur a payé le prix, le vendeur est déchu du droit de déclarer le contrat résolu s'il ne l'a pas fait :

- a) en cas d'exécution tardive par l'acheteur, avant d'avoir su qu'il y avait eu exécution; ou
- b) en cas de contravention pour l'acheteur autre que l'exécution tardive, dans un délai raisonnable :
  - (i) à partir du moment où le vendeur a eu connaissance ou aurait dû avoir connaissance de cette contravention; ou
  - (ii) après l'expiration de tout délai supplémentaire imparti par le vendeur conformément au paragraphe 1 de l'article 63 ou après que l'acheteur ait déclaré qu'il n'exécute pas ses obligations dans ce délai supplémentaire.

*Article 65*

1) Si le contrat prévoit que l'acheteur doit spécifier la forme, la mesure ou d'autres caractéristiques des marchandises et si l'acheteur n'effectue pas cette spécification à la date convenue ou dans un délai raisonnable à compter de la réception d'une demande du vendeur, celui-ci peut, sans préjudice de tous autres droits qu'il peut avoir, effectuer lui-même cette spécification d'après les besoins de l'acheteur dont il peut avoir connaissance.

2) Si le vendeur effectue lui-même la spécification, il doit en faire connaître les modalités à l'acheteur et lui impartir un délai raisonnable pour une spécification différente. Si, après réception de la communication du vendeur, l'acheteur n'utilise pas cette possibilité dans le délai ainsi imparti, la spécification effectuée par le vendeur est définitive.

*CHAPITRE IV***TRANSFERT DES RISQUES***Article 66*

La perte ou la détérioration des marchandises survenue après le transfert des risques à l'acheteur ne libère pas celui-ci de son obligation de payer le prix, à moins que ces événements ne soient dus à un fait du vendeur.



*Article 67*

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

*Article 68*

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

*Article 69*

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

*Article 70*

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

*Article 67*

1) Lorsque le contrat de vente implique un transport des marchandises et que le vendeur n'est pas tenu de les remettre en un lieu déterminé, les risques sont transférés à l'acheteur à partir de la remise des marchandises au premier transporteur pour transmission à l'acheteur conformément au contrat de vente. Lorsque le vendeur est tenu de remettre les marchandises à un transporteur en un lieu déterminé, les risques ne sont pas transférés à l'acheteur tant que les marchandises n'ont pas été remises au transporteur en ce lieu. Le fait que le vendeur soit autorisé à conserver les documents représentatifs des marchandises n'affecte pas le transfert des risques.

2) Cependant, les risques ne sont pas transférés à l'acheteur tant que les marchandises n'ont pas été clairement identifiées aux fins du contrat, que ce soit par l'apposition d'un signe distinctif sur les marchandises, par des documents de transport, par un avis donné à l'acheteur ou par tout autre moyen.

*Article 68*

En ce qui concerne les marchandises vendues en cours de transport, les risques sont transférés à l'acheteur à partir du moment où le contrat est conclu. Toutefois, si les circonstances l'impliquent, les risques sont à la charge de l'acheteur à compter du moment où les marchandises ont été remises au transporteur qui a émis les documents constatant le contrat de transport. Néanmoins, si, au moment de la conclusion du contrat de vente, le vendeur avait connaissance du fait que les marchandises avaient péri ou avaient été détériorées et qu'il n'en a pas informé l'acheteur, la perte ou la détérioration est à la charge du vendeur.

*Article 69*

1) Dans les cas non visés par les articles 67 et 68, les risques sont transférés à l'acheteur lorsqu'il retire les marchandises ou, s'il ne le fait pas en temps voulu, à partir du moment où les marchandises sont mises à sa disposition et où il commet une contravention au contrat en n'en prenant pas livraison.

2) Cependant, si l'acheteur est tenu de retirer les marchandises en un lieu autre qu'un établissement du vendeur, les risques sont transférés lorsque la livraison est due et que l'acheteur sait que les marchandises sont mises à sa disposition en ce lieu.

3) Si la vente porte sur des marchandises non encore individualisées, les marchandises ne sont réputées avoir été mises à la disposition de l'acheteur que lorsqu'elles ont été clairement identifiées aux fins du contrat.

*Article 70*

Si le vendeur a commis une contravention essentielle au contrat, les dispositions des articles 67, 68 et 69 ne portent pas atteinte aux moyens dont l'acheteur dispose en raison de cette contravention.

## CHAPTER V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER  
AND OF THE BUYERSection I. *Anticipatory breach and instalment contracts**Article 71*

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

- (a) a serious deficiency in his ability to perform or in his creditworthiness; or
- (b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

*Article 72*

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

*Article 73*

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

*CHAPITRE V*

## DISPOSITIONS COMMUNES AUX OBLIGATIONS DU VENDEUR ET DE L'ACHETEUR

Section I. *Contravention anticipée et contrats à livraisons successives.**Article 71*

1) Une partie peut différer l'exécution de ses obligations lorsqu'il apparaît, après la conclusion du contrat, que l'autre partie n'exécutera pas une partie essentielle de ses obligations du fait :

- a) d'une grave insuffisance dans la capacité d'exécution de cette partie ou sa solvabilité; ou
- b) de la manière dont elle s'apprête à exécuter ou exécute le contrat.

2) Si le vendeur a déjà expédié les marchandises lorsque se révèlent les raisons prévues au paragraphe précédent, il peut s'opposer à ce que les marchandises soient remises à l'acheteur, même si celui-ci détient un document lui permettant de les obtenir. Le présent paragraphe ne concerne que les droits respectifs du vendeur et de l'acheteur sur les marchandises.

3) La partie qui diffère l'exécution, avant ou après l'expédition des marchandises, doit adresser immédiatement une notification à cet effet à l'autre partie, et elle doit procéder à l'exécution si l'autre partie donne des assurances suffisantes de la bonne exécution de ses obligations.

*Article 72*

1) Si, avant la date de l'exécution du contrat, il est manifeste qu'une partie commettra une contravention essentielle au contrat, l'autre partie peut déclarer celui-ci résolu.

2) Si elle dispose du temps nécessaire, la partie qui a l'intention de déclarer le contrat résolu doit le notifier à l'autre partie dans des conditions raisonnables pour lui permettre de donner des assurances suffisantes de la bonne exécution de ses obligations.

3) Les dispositions du paragraphe précédent ne s'appliquent pas si l'autre partie a déclaré qu'elle n'exécuterait pas ses obligations.

*Article 73*

1) Dans les contrats à livraisons successives, si l'inexécution par l'une des parties d'une obligation relative à une livraison constitue une contravention essentielle au contrat en ce qui concerne cette livraison, l'autre partie peut déclarer le contrat résolu pour ladite livraison.

2) Si l'inexécution par l'une des parties d'une obligation relative à une livraison donne à l'autre partie de sérieuses raisons de penser qu'il y aura contravention essentielle au contrat en ce qui concerne des obligations futures, elle peut déclarer le contrat résolu pour l'avenir, à condition de le faire dans un délai raisonnable.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

## Section II. *Damages*

### *Article 74*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

### *Article 75*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

### *Article 76*

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

### *Article 77*

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.



3) L'acheteur qui déclare le contrat résolu pour une livraison peut, en même temps, le déclarer résolu pour les livraisons déjà reçues ou pour les livraisons futures si, en raison de leur connexité, ces livraisons ne peuvent être utilisées aux fins envisagées par les parties au moment de la conclusion du contrat.

## Section II. *Dommages-interêts.*

### *Article 74*

Les dommages-interêts pour une contravention au contrat commise par une partie sont égaux à la perte subie et au gain manqué par l'autre partie par suite de la contravention. Ces dommages-interêts ne peuvent être supérieurs à la perte subie et au gain manqué que la partie en défaut avait prévu ou aurait dû prévoir au moment de la conclusion du contrat, en considérant les faits dont elle avait connaissance ou aurait dû avoir connaissance, comme étant des conséquences possibles de la contravention au contrat.

### *Article 75*

Lorsque le contrat est résolu et que, d'une manière raisonnable et dans un délai raisonnable après la résolution, l'acheteur a procédé à un achat de remplacement ou le vendeur à une vente compensatoire, la partie qui demande des dommages-interêts peut obtenir la différence entre le prix du contrat et le prix de l'achat de remplacement ou de la vente compensatoire ainsi que tous autres dommages-interêts qui peuvent être dus en vertu de l'article 74.

### *Article 76*

1) Lorsque le contrat est résolu et que les marchandises ont un prix courant, la partie qui demande des dommages-interêts peut, si elle n'a pas procédé à un achat de remplacement ou à une vente compensatoire au titre de l'article 75, obtenir la différence entre le prix fixé dans le contrat et le prix courant au moment de la résolution ainsi que tous autres dommages-interêts qui peuvent être dus au titre de l'article 74. Néanmoins, si la partie qui demande des dommages-interêts a déclaré le contrat résolu après avoir pris possession des marchandises, c'est le prix courant au moment de la prise de possession qui est applicable et non pas le prix courant au moment de la résolution.

2) Aux fins du paragraphe précédent, le prix courant est celui du lieu où la livraison des marchandises aurait dû être effectuée ou, à défaut de prix courant en ce lieu, le prix courant pratiqué en un autre lieu qu'il apparaît raisonnable de prendre comme lieu de référence, en tenant compte des différences dans les frais de transport des marchandises.

### *Article 77*

La partie qui invoque la contravention au contrat doit prendre les mesures raisonnables, eu égard aux circonstances, pour limiter la perte, y compris le gain manqué, résultant de la contravention. Si elle néglige de le faire, la partie défaut peut demander une réduction des dommages-interêts égale au montant de la perte qui aurait dû être évitée.

Section III. *Interest**Article 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. *Exemptions**Article 79*

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

*Article 80*

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. *Effects of avoidance**Article 81*

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Section III. *Intérêts.**Article 78*

Si une partie ne paie pas le prix ou toute autre somme due, l'autre partie a droit à des intérêts sur cette somme, sans préjudice des dommages-intérêts qu'elle serait fondée à demander en vertu de l'article 74.

Section IV. *Exonération.**Article 79*

1) Une partie n'est pas responsable de l'inexécution de l'une quelconque de ses obligations si elle prouve que cette inexécution est due à un empêchement indépendant de sa volonté et que l'on ne pouvait raisonnablement attendre d'elle qu'elle le prenne en considération au moment de la conclusion du contrat, qu'elle le prévienne ou le surmonte ou qu'elle en prévienne ou surmonte les conséquences.

2) Si l'inexécution par une partie est due à l'inexécution par un tiers qu'elle a chargé d'exécuter tout ou partie du contrat, cette partie n'est exonérée de sa responsabilité que dans le cas :

- a) où elle l'est en vertu des dispositions du paragraphe précédent; et
- b) où le tiers serait lui aussi exonéré si les dispositions de ce paragraphe lui étaient appliquées.

3) L'exonération prévue par le présent article produit effet pendant la durée de l'empêchement.

4) La partie qui n'a pas exécuté doit avertir l'autre partie de l'empêchement et de ses effets sur sa capacité d'exécuter. Si l'avertissement n'arrive pas à destination dans un délai raisonnable à partir du moment où la partie qui n'a pas exécuté a connu ou aurait dû connaître l'empêchement, celle-ci est tenue à des dommages-intérêts du fait de ce défaut de réception.

5) Les dispositions du présent article n'interdisent pas à une partie d'exercer tous ses droits autres que celui d'obtenir des dommages-intérêts en vertu de la présente Convention.

*Article 80*

Une partie ne peut pas se prévaloir d'une inexécution par l'autre partie dans la mesure où cette inexécution est due à un acte ou à une omission de sa part.

Section V. *Effets de la résolution.**Article 81*

1) La résolution du contrat libère les deux parties de leurs obligations, sous réserve des dommages-intérêts qui peuvent être dus. Elle n'a pas d'effet sur les stipulations du contrat relatives au règlement des différends ou aux droits et obligations des parties en cas de résolution.

2) La partie qui a exécuté le contrat totalement ou partiellement peut réclamer restitution à l'autre partie de ce qu'elle a fourni ou payé en exécution du contrat. Si les deux parties sont tenues d'effectuer des restitutions, elles doivent y procéder simultanément.

*Article 82*

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

- (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
- (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or
- (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

*Article 83*

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

*Article 84*

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

- (a) if he must make restitution of the goods or part of them; or
- (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

*Section VI. Preservation of the goods**Article 85*

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

*Article 82*

1) L'acheteur perd le droit de déclarer le contrat résolu ou d'exiger du vendeur la livraison de marchandises de remplacement s'il lui est impossible de restituer les marchandises dans un état sensiblement identique à celui dans lequel il les a reçues.

2) Le paragraphe précédent ne s'applique pas :

- a) si l'impossibilité de restituer les marchandises ou de les restituer dans un état sensiblement identique à celui dans lequel l'acheteur les a reçues n'est pas due à un acte ou à une omission de sa part;
- b) si les marchandises ont péri ou sont détériorées, en totalité ou en partie, en conséquence de l'examen prescrit à l'article 38; ou
- c) si l'acheteur, avant le moment où il a constaté ou aurait dû constater le défaut de conformité, a vendu tout ou partie des marchandises dans le cadre d'une opération commerciale normale ou a consommé ou transformé tout ou partie des marchandises conformément à l'usage normal.

*Article 83*

L'acheteur qui a perdu le droit de déclarer le contrat résolu ou d'exiger du vendeur la livraison de marchandises de remplacement en vertu de l'article 82 conserve le droit de se prévaloir de tous les autres moyens qu'il tient du contrat et de la présente Convention.

*Article 84*

1) Si le vendeur est tenu de restituer le prix, il doit aussi payer des intérêts sur le montant de ce prix à compter du jour du paiement.

2) L'acheteur doit au vendeur l'équivalent de tout profit qu'il a retiré des marchandises ou d'une partie de celles-ci :

- a) lorsqu'il doit les restituer en tout ou en partie; ou
- b) lorsqu'il est dans l'impossibilité de restituer tout ou partie des marchandises ou de les restituer en tout ou en partie dans un état sensiblement identique à celui dans lequel il les a reçues et que néanmoins il a déclaré le contrat résolu ou a exigé du vendeur la livraison de marchandises de remplacement.

Section VI. *Conservation des marchandises.*

*Article 85*

Lorsque l'acheteur tarde à prendre livraison des marchandises ou qu'il n'en paie pas le prix, alors que le paiement du prix et la livraison doivent se faire simultanément, le vendeur, s'il a les marchandises en sa possession ou sous son contrôle, doit prendre les mesures raisonnables, eu égard aux circonstances, pour en assurer la conservation. Il est fondé à les retenir jusqu'à ce qu'il ait obtenu de l'acheteur le remboursement de ses dépenses raisonnables.



*Article 86*

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

*Article 87*

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

*Article 88*

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

## PART IV

## FINAL PROVISIONS

*Article 89*

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

*Article 86*

1) Si l'acheteur a reçu les marchandises et entend exercer tout droit de les refuser en vertu du contrat ou de la présente Convention, il doit prendre les mesures raisonnables, eu égard aux circonstances, pour en assurer la conservation. Il est fondé à les retenir jusqu'à ce qu'il ait obtenu du vendeur le remboursement de ses dépenses raisonnables.

2) Si les marchandises expédiées à l'acheteur ont été mises à sa disposition à leur lieu de destination et si l'acheteur exerce le droit de les refuser, il doit en prendre possession pour le compte du vendeur à condition de pouvoir le faire sans paiement du prix et sans inconvénient ou frais déraisonnables. Cette disposition ne s'applique pas si le vendeur est présent au lieu de destination ou s'il y a en ce lieu une personne ayant qualité pour prendre les marchandises en charge pour son compte. Les droits et obligations de l'acheteur qui prend possession des marchandises en vertu du présent paragraphe sont régis par le paragraphe précédent.

*Article 87*

La partie qui est tenue de prendre des mesures pour assurer la conservation des marchandises peut les déposer dans les magasins d'un tiers aux frais de l'autre partie, à condition que les frais qui en résultent ne soient pas déraisonnables.

*Article 88*

1) La partie qui doit assurer la conservation des marchandises conformément aux articles 85 ou 86 peut les vendre par tous moyens appropriés si l'autre partie a apporté un retard déraisonnable à prendre possession des marchandises ou à les reprendre ou à payer le prix ou les frais de leur conservation, sous réserve de notifier à cette autre partie, dans des conditions raisonnables, son intention de vendre.

2) Lorsque les marchandises sont sujettes à une détérioration rapide ou lorsque leur conservation entraînerait des frais déraisonnables, la partie qui est tenue d'assurer la conservation des marchandises conformément aux articles 85 ou 86 doit raisonnablement s'employer à les vendre. Dans la mesure du possible, elle doit notifier à l'autre partie son intention de vendre.

3) La partie qui vend les marchandises a le droit de retenir sur le produit de la vente un montant égal aux frais raisonnables de conservation et de vente des marchandises. Elle doit le surplus à l'autre partie.

## QUATRIÈME PARTIE

## DISPOSITIONS FINALES

*Article 89*

Le Secrétaire général de l'Organisation des Nations Unies est désigné comme dépositaire de la présente Convention.

*Article 90*

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

*Article 91*

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

*Article 92*

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

*Article 93*

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

*Article 90*

La présente Convention ne prévaut pas sur un accord international déjà conclu ou à conclure qui contient des dispositions concernant les matières régies par la présente Convention, à condition que les parties au contrat aient leur établissement dans les États parties à cet accord.

*Article 91*

1) La présente Convention sera ouverte à la signature à la séance de clôture de la Conférence des Nations Unies sur les contrats de vente internationale de marchandises et restera ouverte à la signature de tous les États au Siège de l'Organisation des Nations Unies, à New York, jusqu'au 30 septembre 1981.

2) La présente Convention est sujette à ratification, acceptation ou approbation par les États signataires.

3) La présente Convention sera ouverte à l'adhésion de tous les États qui ne sont pas signataires, à partir de la date à laquelle elle sera ouverte à la signature.

4) Les instruments de ratification, d'acceptation, d'approbation ou d'adhésion seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

*Article 92*

1) Tout État contractant pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer qu'il ne sera pas lié par la deuxième partie de la présente Convention ou qu'il ne sera pas lié par la troisième partie de la présente Convention.

2) Un État contractant qui fait, en vertu du paragraphe précédent, une déclaration à l'égard de la deuxième partie ou de la troisième partie de la présente Convention ne sera pas considéré comme étant un État contractant, au sens du paragraphe 1 de l'article premier de la Convention, pour les matières régies par la partie de la Convention à laquelle cette déclaration s'applique.

*Article 93*

1) Tout État contractant qui comprend deux ou plusieurs unités territoriales dans lesquelles, selon sa constitution, des systèmes de droit différents s'appliquent dans les matières régies par la présente Convention pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention s'appliquera à toutes ses unités territoriales ou seulement à l'une ou plusieurs d'entre elles et pourra à tout moment modifier cette déclaration en faisant une nouvelle déclaration.

2) Ces déclarations seront notifiées au dépositaire et désigneront expressément les unités territoriales auxquelles la Convention s'applique.

3) Si, en vertu d'une déclaration faite conformément au présent article, la présente Convention s'applique à l'une ou plusieurs des unités territoriales d'un État contractant, mais non pas à toutes, et si l'établissement d'une partie au contrat est situé dans cet État, cet établissement sera considéré,

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

*Article 94*

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

*Article 95*

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.

*Article 96*

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

*Article 97*

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.



aux fins de la présente Convention, comme n'étant pas situé dans un État contractant, à moins qu'il ne soit situé dans une unité territoriale à laquelle la Convention s'applique.

4) Si un État contractant ne fait pas de déclaration en vertu du paragraphe 1 du présent article, la Convention s'appliquera à l'ensemble du territoire de cet État.

#### *Article 94*

1) Deux ou plusieurs États contractants qui, dans des matières régies par la présente Convention, appliquent des règles juridiques identiques ou voisines peuvent, à tout moment, déclarer que la Convention ne s'appliquera pas aux contrats de vente ou à leur formation lorsque les parties ont leur établissement dans ces États. De telles déclarations peuvent être faites conjointement ou être unilatérales et réciproques.

2) Un État contractant qui, dans des matières régies par la présente Convention, applique des règles juridiques identiques ou voisines de celles d'un ou de plusieurs États non contractants peut, à tout moment, déclarer que la Convention ne s'appliquera pas aux contrats de vente ou à leur formation lorsque les parties ont leur établissement dans ces États.

3) Lorsqu'un État à l'égard duquel une déclaration a été faite en vertu du paragraphe précédent devient par la suite un État contractant, la déclaration mentionnée aura, à partir de la date à laquelle la présente Convention entrera en vigueur à l'égard de ce nouvel État contractant, les effets d'une déclaration faite en vertu du paragraphe 1, à condition que le nouvel État contractant s'y associe ou fasse une déclaration unilatérale à titre réciproque.

#### *Article 95*

Tout État peut déclarer, au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, qu'il ne sera pas lié par l'alinéa b) du paragraphe 1 de l'article premier de la présente Convention.

#### *Article 96*

Tout État contractant dont la législation exige que les contrats de vente soient conclus ou constatés par écrit peut à tout moment déclarer, conformément à l'article 12, que toute disposition de l'article 11, de l'article 29 ou de la deuxième partie de la présente Convention autorisant une forme autre que la forme écrite pour la conclusion, la modification ou la résiliation amiable d'un contrat de vente, ou pour toute offre, acceptation ou autre manifestation d'intention, ne s'applique pas dès lors que l'une des parties a son établissement dans cet État.

#### *Article 97*

1) Les déclarations faites en vertu de la présente Convention lors de la signature sont sujettes à confirmation lors de la ratification, de l'acceptation ou de l'approbation.

2) Les déclarations, et la confirmation des déclarations, seront faites par écrit et formellement notifiées au dépositaire.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

#### *Article 98*

No reservations are permitted except those expressly authorized in this Convention.

#### *Article 99*

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

3) Les déclarations prendront effet à la date de l'entrée en vigueur de la présente Convention à l'égard de l'État déclarant. Cependant, les déclarations dont le dépositaire aura reçu notification formelle après cette date prendront effet le premier jour du mois suivant l'expiration d'un délai de six mois à compter de la date de leur réception par le dépositaire. Les déclarations unilatérales et réciproques faites en vertu de l'article 94 prendront effet le premier jour du mois suivant l'expiration d'une période de six mois après la date de la réception de la dernière déclaration par le dépositaire.

4) Tout État qui fait une déclaration en vertu de la présente Convention peut à tout moment la retirer par une notification formelle adressée par écrit au dépositaire. Ce retrait prendra effet le premier jour du mois suivant l'expiration d'une période de six mois après la date de réception de la notification par le dépositaire.

5) Le retrait d'une déclaration faite en vertu de l'article 94 rendra caduque, à partir de la date de sa prise d'effet, toute déclaration réciproque faite par un autre État en vertu de ce même article.

#### *Article 98*

Aucune réserve n'est autorisée autre que celles qui sont expressément autorisées par la présente Convention.

#### *Article 99*

1) La présente Convention entrera en vigueur, sous réserve des dispositions du paragraphe 6 du présent article, le premier jour du mois suivant l'expiration d'une période de douze mois après la date du dépôt du dixième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, y compris tout instrument contenant une déclaration faite en vertu de l'article 92.

2) Lorsqu'un État ratifiera, acceptera ou approuvera la présente Convention ou y adhèrera après le dépôt du dixième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, la Convention, à l'exception de la partie exclue, entrera en vigueur à l'égard de cet État, sous réserve des dispositions du paragraphe 6 du présent article, le premier jour du mois suivant l'expiration d'une période de douze mois après la date du dépôt de l'instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

3) Tout État qui ratifiera, acceptera ou approuvera la présente Convention ou y adhèrera et qui est partie à la Convention portant loi uniforme sur la formation des contrats de vente internationale des objets mobiliers corporels faite à La Haye le 1<sup>er</sup> juillet 1964 (Convention de La Haye de 1964 sur la formation) ou à la Convention portant loi uniforme sur la vente internationale des objets mobiliers corporels faite à La Haye le 1<sup>er</sup> juillet 1964 (Convention de La Haye de 1964 sur la vente), ou à ces deux conventions, dénoncera en même temps, selon le cas, la Convention de La Haye de 1964 sur la vente ou la Convention de La Haye sur la formation, ou ces deux conventions, en adressant une notification à cet effet au Gouvernement néerlandais.

4) Tout État partie à la Convention de La Haye de 1964 sur la vente qui ratifiera, acceptera ou approuvera la présente Convention ou y adhèrera et qui déclarera ou aura déclaré en vertu de l'article 92 qu'il n'est pas lié par la deuxième partie de la Convention, dénoncera, au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, la Convention de La Haye de 1964 sur la vente en adressant une notification à cet effet au Gouvernement néerlandais.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

#### *Article 100*

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

#### *Article 101*

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.



5) Tout État partie à la Convention de La Haye de 1964 sur la vente qui ratifiera, acceptera ou approuvera la présente Convention ou y adhérera et qui déclarera ou aura déclaré en vertu de l'article 92 qu'il n'est pas lié par la troisième partie de la Convention, dénoncera, au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, la Convention de La Haye de 1964 sur la formation en adressant une notification à cet effet au Gouvernement néerlandais.

6) Aux fins du présent article, les ratifications, acceptations, approbations et adhésions effectuées à l'égard de la présente Convention par des États parties à la Convention de La Haye de 1964 sur la formation ou à la Convention de La Haye de 1964 sur la vente ne prendront effet qu'à la date à laquelle les dénonciations éventuellement requises de la part desdits États à l'égard de ces deux conventions auront elles-mêmes pris effet. Le dépositaire de la présente Convention s'entendra avec le Gouvernement néerlandais, dépositaire des conventions de 1964, pour assurer la coordination nécessaire à cet égard.

#### *Article 100*

1) La présente Convention s'applique à la formation des contrats conclus à la suite d'une proposition intervenue après l'entrée en vigueur de la Convention à l'égard des États contractants visés à l'alinéa a) du paragraphe 1 de l'article premier ou de l'État contractant visé à l'alinéa b) du paragraphe 1 de l'article premier.

2) La présente Convention s'applique uniquement aux contrats conclus après son entrée en vigueur à l'égard des États contractants visés à l'alinéa a) du paragraphe 1 de l'article premier ou de l'État contractant visé à l'alinéa b) du paragraphe 1 de l'article premier.

#### *Article 101*

1) Tout État contractant pourra dénoncer la présente Convention, ou la deuxième ou la troisième partie de la Convention, par une notification formelle adressée par écrit au dépositaire.

2) La dénonciation prendra effet le premier jour du mois suivant l'expiration d'une période de douze mois après la date de réception de la notification par le dépositaire. Lorsqu'une période plus longue pour la prise d'effet de la dénonciation est spécifiée dans la notification, la dénonciation prendra effet à l'expiration de la période en question après la date de réception de la notification.

FAIT à Vienne, le onze avril mil neuf cent quatre-vingt, en un seul original, dont les textes anglais, arabe, chinois, espagnol, français et russe sont également authentiques.

EN FOI DE QUOI les plénipotentiaires soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé la présente Convention.









## Bill 90

(Chapter 45  
*Statutes of Ontario, 1988*)

### **An Act respecting the United Nations Convention on Contracts for the International Sale of Goods**

The Hon. I. Scott  
*Attorney General*

*1st Reading*    December 21st, 1987  
*2nd Reading*    June 27th, 1988  
*3rd Reading*    June 29th, 1988  
*Royal Assent*    June 29th, 1988

## Projet de loi 90

(Chapitre 45  
*Lois de l'Ontario de 1988*)

### **Loi concernant la Convention des Nations Unies sur les contrats de vente internationale de marchandises**

L'honorable I. Scott  
*procureur général*

*1<sup>re</sup> lecture*    21 décembre 1987  
*2<sup>e</sup> lecture*    27 juin 1988  
*3<sup>e</sup> lecture*    29 juin 1988  
*sanction royale*    29 juin 1988

**Bill 90****1987**

**An Act respecting the United Nations Convention  
on Contracts for the  
International Sale of Goods**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition  
“Convention”

**1.** In this Act, “Convention” means the United Nations Convention on Contracts for the International Sale of Goods set out in the Schedule.

Declaration  
of  
Government  
of Canada

**2.** The Attorney General shall request the Government of Canada to declare in accordance with article 93 of the Convention that the Convention extends to Ontario.

Convention  
in force

**3.** On the date the Convention comes into force in Canada in accordance with article 99 of the Convention, the Convention comes into force in Ontario.

Publication

**4.** The Attorney General shall cause to be published in *The Ontario Gazette* the date the Convention comes into force in Ontario.

This Act  
prevails

**5.** Where there is a conflict between this Act and any other enactment, this Act prevails.

Exclusion of  
Convention

**6.** Parties to a contract to which the Convention would otherwise apply may exclude its application by expressly providing in the contract that the local domestic law of Ontario or another jurisdiction applies to it or that the Convention does not apply to it.

Commence-  
ment

**7.** This Act comes into force on the day it receives Royal Assent.

Short title

**8.** The short title of this Act is the *International Sale of Goods Act, 1988*.



**Projet de loi 90****1987**

**Loi concernant la Convention des Nations  
Unies sur les contrats de vente  
internationale de marchandises**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

- 1** Dans la présente loi, «Convention» s'entend de la Convention des Nations Unies sur les contrats de vente internationale de marchandises, dont le texte est reproduit à l'annexe. Définition  
«Convention»
- 2** Le procureur général demande au gouvernement du Canada de déclarer, en conformité avec l'article 93 de la Convention, que celle-ci s'applique à l'Ontario. Déclaration  
du  
gouvernement  
du Canada
- 3** À la date d'entrée en vigueur de la Convention au Canada, en conformité avec son article 99, celle-ci entre en vigueur en Ontario. Convention en  
vigueur
- 4** Le procureur général fait publier dans la *Gazette de l'Ontario* la date d'entrée en vigueur de la Convention en Ontario. Publication
- 5** La présente loi l'emporte sur tout autre texte législatif incompatible. La présente  
loi l'emporte
- 6** Les parties à un contrat auquel s'appliquerait la Convention peuvent exclure son application en prévoyant expressément dans le contrat que le droit interne local de l'Ontario ou d'un autre ressort s'y applique ou que la Convention ne s'y applique pas. Exclusion de  
la Convention
- 7** La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en  
vigueur
- 8** Le titre abrégé de la présente loi est *Loi de 1988 sur la vente internationale de marchandises*. Titre abrégé

## SCHEDULE

### UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE AGREED as follows:

#### PART I

#### SPHERE OF APPLICATION AND GENERAL PROVISIONS

##### *CHAPTER I*

#### SPHERE OF APPLICATION

##### *Article 1*

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

##### *Article 2*

This Convention does not apply to sales:

## ANNEXE

CONVENTION DES NATIONS UNIES SUR LES CONTRATS DE  
VENTE INTERNATIONALE DE MARCHANDISES

LES ÉTATS PARTIES À LA PRÉSENTE CONVENTION,

AYANT PRÉSENTS À L'ESPRIT les objectifs généraux inscrits dans les résolutions relatives à l'instauration d'un nouvel ordre économique international que l'Assemblée générale a adoptées à sa sixième session extraordinaire,

CONSIDÉRANT que le développement du commerce international sur la base de l'égalité et des avantages mutuels est un élément important dans la promotion de relations amicales entre les États,

ESTIMANT que l'adoption de règles uniformes applicables aux contrats de vente internationale de marchandises et compatibles avec les différents systèmes sociaux, économiques et juridiques contribuera à l'élimination des obstacles juridiques aux échanges internationaux et favorisera le développement du commerce international,

SONT CONVENUS de ce qui suit :

## PREMIÈRE PARTIE

## CHAMP D'APPLICATION ET DISPOSITIONS GÉNÉRALES

## CHAPITRE I

## CHAMP D'APPLICATION

*Article Premier*

1) La présente Convention s'applique aux contrats de vente de marchandises entre des parties ayant leur établissement dans des États différents :

- a) lorsque ces États sont des États contractants; ou
- b) lorsque les règles du droit international privé mènent à l'application de la loi d'un État contractant.

2) Il n'est pas tenu compte du fait que les parties ont leur établissement dans des États différents lorsque ce fait ne ressort ni du contrat, ni de transactions antérieures entre les parties, ni de renseignements donnés par elles à un moment quelconque avant la conclusion ou lors de la conclusion du contrat.

3) Ni la nationalité des parties ni le caractère civil ou commercial des parties ou du contrat ne sont pris en considération pour l'application de la présente Convention.

*Article 2*

La présente Convention ne régit pas les ventes :

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

#### *Article 3*

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

#### *Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

#### *Article 5*

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

#### *Article 6*

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

- a) de marchandises achetées pour un usage personnel, familial ou domestique, à moins que le vendeur, à un moment quelconque avant la conclusion ou lors de la conclusion du contrat, n'ait pas su et n'ait pas été censé savoir que ces marchandises étaient achetées pour un tel usage;
- b) aux enchères;
- c) sur saisie ou de quelque autre manière par autorité de justice;
- d) de valeurs mobilières, effets de commerce et monnaies;
- e) de navires, bateaux, aéroglisseurs et aéronefs;
- f) d'électricité.

#### *Article 3*

1) Sont réputés ventes les contrats de fourniture de marchandises à fabriquer ou à produire, à moins que la partie qui commande celles-ci n'ait à fournir une part essentielle des éléments matériels nécessaires à cette fabrication ou production.

2) La présente Convention ne s'applique pas aux contrats dans lesquels la part prépondérante de l'obligation de la partie qui fournit les marchandises consiste en une fourniture de main-d'oeuvre ou d'autres services.

#### *Article 4*

La présente Convention régit exclusivement la formation du contrat de vente et les droits et obligations qu'un tel contrat fait naître entre le vendeur et l'acheteur. En particulier, sauf disposition contraire expresse de la présente Convention, celle-ci ne concerne pas :

- a) la validité du contrat ni celle d'aucune de ses clauses non plus que celle des usages;
- b) les effets que le contrat peut avoir sur la propriété des marchandises vendues.

#### *Article 5*

La présente Convention ne s'applique pas à la responsabilité du vendeur pour décès ou lésions corporelles causés à quiconque par les marchandises.

#### *Article 6*

Les parties peuvent exclure l'application de la présente Convention ou, sous réserve des dispositions de l'article 12, déroger à l'une quelconque de ses dispositions ou en modifier les effets.



*CHAPTER II*

## GENERAL PROVISIONS

*Article 7*

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

*Article 8*

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

*Article 9*

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

*Article 10*

For the purposes of this Convention:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

*CHAPITRE II*

## DISPOSITIONS GÉNÉRALES

*Article 7*

1) Pour l'interprétation de la présente Convention, il sera tenu compte de son caractère international et de la nécessité de promouvoir l'uniformité de son application ainsi que d'assurer le respect de la bonne foi dans le commerce international.

2) Les questions concernant les matières régies par la présente Convention et qui ne sont pas expressément tranchées par elle seront réglées selon les principes généraux dont elle s'inspire ou, à défaut de ces principes, conformément à la loi applicable en vertu des règles du droit international privé.

*Article 8*

1) Aux fins de la présente Convention, les indications et les autres comportements d'une partie doivent être interprétés selon l'intention de celle-ci lorsque l'autre partie connaissait ou ne pouvait ignorer cette intention.

2) Si le paragraphe précédent n'est pas applicable, les indications et autres comportements d'une partie doivent être interprétés selon le sens qu'une personne raisonnable de même qualité que l'autre partie, placée dans la même situation, leur aurait donné.

3) Pour déterminer l'intention d'une partie ou ce qu'aurait compris une personne raisonnable, il doit être tenu compte des circonstances pertinentes, notamment des négociations qui ont pu avoir lieu entre les parties, des habitudes qui se sont établies entre elles, des usages et de tout comportement ultérieur des parties.

*Article 9*

1) Les parties sont liées par les usages auxquels elles ont consenti et par les habitudes qui se sont établies entre elles.

2) Sauf convention contraire des parties, celles-ci sont réputées s'être tacitement référées dans le contrat et pour sa formation à tout usage dont elles avaient connaissance ou auraient dû avoir connaissance et qui, dans le commerce international, est largement connu et régulièrement observé par les parties à des contrats de même type dans la branche commerciale considérée.

*Article 10*

Aux fins de la présente Convention :

- a) si une partie a plus d'un établissement, l'établissement à prendre en considération est celui qui a la relation la plus étroite avec le contrat et son exécution eu égard aux circonstances connues des parties ou envisagées par elles à un moment quelconque avant la conclusion ou lors de la conclusion du contrat;
- b) si une partie n'a pas d'établissement, sa résidence habituelle en tient lieu.

*Article 11*

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

*Article 12*

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

*Article 13*

For the purposes of this Convention "writing" includes telegram and telex.

## PART II

## FORMATION OF THE CONTRACT

*Article 14*

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

*Article 15*

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

*Article 16*

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

- (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

*Article 11*

Le contrat de vente n'a pas à être conclu ni constaté par écrit et n'est soumis à aucune autre condition de forme. Il peut être prouvé par tous moyens, y compris par témoins.

*Article 12*

Toute disposition de l'article 11, de l'article 29 ou de la deuxième partie de la présente Convention autorisant une forme autre que la forme écrite, soit pour la conclusion ou pour la modification ou la résiliation amiable d'un contrat de vente, soit pour toute offre, acceptation ou autre manifestation d'intention, ne s'applique pas dès lors qu'une des parties a son établissement dans un État contractant qui a fait une déclaration conformément à l'article 96 de la présente Convention. Les parties ne peuvent déroger au présent article ni en modifier les effets.

*Article 13*

Aux fins de la présente Convention, le terme «écrit» doit s'entendre également des communications adressées par télégramme ou par télex.

## DEUXIÈME PARTIE

## FORMATION DU CONTRAT

*Article 14*

1) Une proposition de conclure un contrat adressée à une ou plusieurs personnes déterminées constitue une offre si elle est suffisamment précise et si elle indique la volonté de son auteur d'être lié en cas d'acceptation. Une proposition est suffisamment précise lorsqu'elle désigne les marchandises et, expressément ou implicitement, fixe la quantité et le prix ou donne des indications permettant de les déterminer.

2) Une proposition adressée à des personnes indéterminées est considérée seulement comme une invitation à l'offre, à moins que la personne qui a fait la proposition n'ait clairement indiqué le contraire.

*Article 15*

1) Une offre prend effet lorsqu'elle parvient au destinataire.

2) Une offre, même si elle est irrévocable, peut être rétractée si la rétractation parvient au destinataire avant ou en même temps que l'offre.

*Article 16*

1) Jusqu'à ce qu'un contrat ait été conclu, une offre peut être révoquée si la révocation parvient au destinataire avant que celui-ci ait expédié une acceptation.

2) Cependant, une offre ne peut être révoquée :

- a) si elle indique, en fixant un délai déterminé pour l'acceptation, ou autrement, qu'elle est irrévocable; ou

- (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

#### *Article 17*

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

#### *Article 18*

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

#### *Article 19*

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

#### *Article 20*

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.



- b) s'il était raisonnable pour le destinataire de considérer l'offre comme irrévocable et s'il a agi en conséquence.

#### *Article 17*

Une offre, même irrévocable, prend fin lorsque son rejet parvient à l'auteur de l'offre.

#### *Article 18*

1) Une déclaration ou autre comportement du destinataire indiquant qu'il acquiesce à une offre constitue une acceptation. Le silence ou l'inaction à eux seuls ne peuvent valoir acceptation.

2) L'acceptation d'une offre prend effet au moment où l'indication d'acquiescement parvient à l'auteur de l'offre. L'acceptation ne prend pas effet si cette indication ne parvient pas à l'auteur de l'offre dans le délai qu'il a stipulé ou, à défaut d'une telle stipulation, dans un délai raisonnable, compte tenu des circonstances de la transaction et de la rapidité des moyens de communication utilisés par l'auteur de l'offre. Une offre verbale doit être acceptée immédiatement, à moins que les circonstances n'impliquent le contraire.

3) Cependant, si, en vertu de l'offre, des habitudes qui se sont établies entre les parties ou des usages, le destinataire de l'offre peut indiquer qu'il acquiesce en accomplissant un acte se rapportant, par exemple, à l'expédition des marchandises ou au paiement du prix, sans communication à l'auteur de l'offre, l'acceptation prend effet au moment où cet acte est accompli, pour autant qu'il le soit dans les délais prévus par le paragraphe précédent.

#### *Article 19*

1) Une réponse qui tend à être l'acceptation d'une offre, mais qui contient des additions, des limitations ou autres modifications, est un rejet de l'offre et constitue une contre-offre.

2) Cependant, une réponse qui tend à être l'acceptation d'une offre, mais qui contient des éléments complémentaires ou différents n'altérant pas substantiellement les termes de l'offre, constitue une acceptation, à moins que l'auteur de l'offre, sans retard injustifié, n'en relève les différences verbalement ou n'adresse un avis à cet effet. S'il ne le fait pas, les termes du contrat sont ceux de l'offre, avec les modifications comprises dans l'acceptation.

3) Des éléments complémentaires ou différents relatifs notamment au prix, au paiement, à la qualité et à la quantité des marchandises, au lieu et au moment de la livraison, à l'étendue de la responsabilité d'une partie à l'égard de l'autre ou au règlement des différends, sont considérés comme altérant substantiellement les termes de l'offre.

#### *Article 20*

1) Le délai d'acceptation fixé par l'auteur de l'offre dans un télégramme ou une lettre commence à courir au moment où le télégramme est remis pour expédition ou à la date qui apparaît sur la lettre ou, à défaut, à la date qui apparaît sur l'enveloppe. Le délai d'acceptation que l'auteur de l'offre fixe par téléphone, par télex ou par d'autres moyens de communication instantanés commence à courir au moment où l'offre parvient au destinataire.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

#### *Article 21*

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

#### *Article 22*

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

#### *Article 23*

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

#### *Article 24*

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

### PART III

## SALE OF GOODS

### CHAPTER I

## GENERAL PROVISIONS

#### *Article 25*

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

2) Les jours fériés ou chômés qui tombent pendant que court le délai d'acceptation sont comptés dans le calcul de ce délai. Cependant, si la notification ne peut être remise à l'adresse de l'auteur de l'offre le dernier jour du délai, parce que celui-ci tombe un jour férié ou chômé au lieu d'établissement de l'auteur de l'offre, le délai est prorogé jusqu'au premier jour ouvrable suivant.

#### *Article 21*

1) Une acceptation tardive produit néanmoins effet en tant qu'acceptation si, sans retard, l'auteur de l'offre en informe verbalement le destinataire ou lui adresse un avis à cet effet.

2) Si la lettre ou autre écrit contenant une acceptation tardive révèle qu'elle a été expédiée dans des conditions telles que, si sa transmission avait été régulière, elle serait parvenue à temps à l'auteur de l'offre, l'acceptation tardive produit effet en tant qu'acceptation à moins que, sans retard, l'auteur de l'offre n'informe verbalement le destinataire de l'offre qu'il considère que son offre avait pris fin ou qu'il ne lui adresse un avis à cet effet.

#### *Article 22*

L'acceptation peut être rétractée si la rétractation parvient à l'auteur de l'offre avant le moment où l'acceptation aurait pris effet ou à ce moment.

#### *Article 23*

Le contrat est conclu au moment où l'acceptation d'une offre prend effet conformément aux dispositions de la présente Convention.

#### *Article 24*

Aux fins de la présente partie de la Convention, une offre, une déclaration d'acceptation ou toute autre manifestation d'intention «parvient» à son destinataire lorsqu'elle lui est faite verbalement ou est délivrée par tout autre moyen au destinataire lui-même, à son établissement, à son adresse postale ou, s'il n'a pas d'établissement ou d'adresse postale, à sa résidence habituelle.

### TROISIÈME PARTIE

#### VENTE DE MARCHANDISES

##### CHAPITRE I

#### DISPOSITIONS GÉNÉRALES

#### *Article 25*

Une contravention au contrat commise par l'une des parties est essentielle lorsqu'elle cause à l'autre partie un préjudice tel qu'elle la prive substantiellement de ce que celle-ci était en droit d'attendre du contrat, à moins que la partie en défaut n'ait pas prévu un tel résultat et qu'une personne raisonnable de même qualité placée dans la même situation ne l'aurait pas prévu non plus.

*Article 26*

A declaration of avoidance of the contract is effective only if made by notice to the other party.

*Article 27*

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

*Article 28*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

*Article 29*

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

*CHAPTER II**OBLIGATIONS OF THE SELLER**Article 30*

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

*Section I. Delivery of the goods and handing over of documents**Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

*Article 26*

Une déclaration de résolution du contrat n'a d'effet que si elle est faite par notification à l'autre partie.

*Article 27*

Sauf disposition contraire expresse de la présente partie de la Convention, si une notification, demande ou autre communication est faite par une partie au contrat conformément à la présente partie et par un moyen approprié aux circonstances, un retard ou une erreur dans la transmission de la communication ou le fait qu'elle n'est pas arrivée à destination ne prive pas cette partie au contrat du droit de s'en prévaloir.

*Article 28*

Si, conformément aux dispositions de la présente Convention, une partie a le droit d'exiger de l'autre l'exécution d'une obligation, un tribunal n'est tenu d'ordonner l'exécution en nature que s'il le ferait en vertu de son propre droit pour des contrats de vente semblables non régis par la présente Convention.

*Article 29*

1) Un contrat peut être modifié ou résilié par accord amiable entre les parties.

2) Un contrat écrit qui contient une disposition stipulant que toute modification ou résiliation amiable doit être faite par écrit ne peut être modifié ou résilié à l'amiable sous une autre forme. Toutefois, le comportement de l'une des parties peut l'empêcher d'invoquer une telle disposition si l'autre partie s'est fondée sur ce comportement.

*CHAPITRE II**OBLIGATIONS DU VENDEUR**Article 30*

Le vendeur s'oblige, dans les conditions prévues au contrat et par la présente Convention, à livrer les marchandises, à en transférer la propriété et, s'il y a lieu, à remettre les documents s'y rapportant.

*Section I. Livraison des marchandises et remise des documents.**Article 31*

Si le vendeur n'est pas tenu de livrer les marchandises en un autre lieu particulier son obligation de livraison consiste :

- a) lorsque le contrat de vente implique un transport des marchandises, à remettre les marchandises au premier transporteur pour transmission à l'acheteur;



- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;
- (c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

#### *Article 32*

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

#### *Article 33*

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

#### *Article 34*

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

- b) lorsque, dans les cas non visés au précédent alinéa, le contrat porte sur un corps certain ou sur une chose de genre qui doit être prélevée sur une masse déterminée ou qui doit être fabriquée ou produite et lorsque, au moment de la conclusion du contrat, les parties savaient que les marchandises se trouvaient ou devaient être fabriquées ou produites en un lieu particulier, à mettre les marchandises à la disposition de l'acheteur en ce lieu;
- c) dans les autres cas, à mettre les marchandises à la disposition de l'acheteur au lieu où le vendeur avait son établissement au moment de la conclusion du contrat.

#### *Article 32*

1) Si, conformément au contrat ou à la présente Convention, le vendeur remet les marchandises à un transporteur et si les marchandises ne sont pas clairement identifiées aux fins du contrat par l'apposition d'un signe distinctif sur les marchandises, par des documents de transport ou par tout autre moyen, le vendeur doit donner à l'acheteur avis de l'expédition en désignant spécifiquement les marchandises.

2) Si le vendeur est tenu de prendre des dispositions pour le transport des marchandises, il doit conclure les contrats nécessaires pour que le transport soit effectué jusqu'au lieu prévu, par les moyens de transport appropriés aux circonstances et selon les conditions usuelles pour un tel transport.

3) Si le vendeur n'est pas tenu de souscrire lui-même une assurance de transport, il doit fournir à l'acheteur, à la demande de celui-ci, tous renseignements dont il dispose qui sont nécessaires à la conclusion de cette assurance.

#### *Article 33*

Le vendeur doit livrer les marchandises :

- a) si une date est fixée par le contrat ou déterminable par référence au contrat, à cette date;
- b) si une période de temps est fixée par le contrat ou déterminable par référence au contrat, à un moment quelconque au cours de cette période, à moins qu'il ne résulte des circonstances que c'est à l'acheteur de choisir une date; ou
- c) dans tous les autres cas, dans un délai raisonnable à partir de la conclusion du contrat.

#### *Article 34*

Si le vendeur est tenu de remettre les documents se rapportant aux marchandises, il doit s'acquitter de cette obligation au moment, au lieu et dans la forme prévue au contrat. En cas de remise anticipée, le vendeur conserve, jusqu'au moment prévu pour la remise, le droit de réparer tout défaut de conformité des documents, à condition que l'exercice de ce droit ne cause à l'acheteur ni inconvénient ni frais déraisonnables. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

*Section II. Conformity of the goods and third party claims**Article 35*

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

*Article 36*

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

*Article 37*

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

*Article 38*

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

Section II. *Conformité des marchandises et droits ou prétentions de tiers.*

*Article 35*

1) Le vendeur doit livrer des marchandises dont la quantité, la qualité et le type répondent à ceux qui sont prévus au contrat, et dont l'emballage ou le conditionnement correspond à celui qui est prévu au contrat.

2) À moins que les parties n'en soient convenues autrement, les marchandises ne sont conformes au contrat que si :

- a) elles sont propres aux usages auxquels serviraient habituellement des marchandises du même type;
- b) elles sont propres à tout usage spécial qui a été porté expressément ou tacitement à la connaissance du vendeur au moment de la conclusion du contrat, sauf s'il résulte des circonstances que l'acheteur ne s'en est pas remis à la compétence ou à l'appréciation du vendeur ou qu'il n'était pas raisonnable de sa part de le faire;
- c) elles possèdent les qualités d'une marchandise que le vendeur a présentée à l'acheteur comme échantillon ou modèle;
- d) elles sont emballées ou conditionnées selon le mode habituel pour les marchandises du même type ou, à défaut de mode habituel, d'une manière propre à les conserver et à les protéger.

3) Le vendeur n'est pas responsable, au regard des alinéas a) à d) du paragraphe précédent, d'un défaut de conformité que l'acheteur connaissait ou ne pouvait ignorer au moment de la conclusion du contrat.

*Article 36*

1) Le vendeur est responsable, conformément au contrat et à la présente Convention, de tout défaut de conformité qui existe au moment du transfert des risques à l'acheteur, même si ce défaut n'apparaît qu'ultérieurement.

2) Le vendeur est également responsable de tout défaut de conformité qui survient après le moment indiqué au paragraphe précédent et qui est imputable à l'inexécution de l'une quelconque de ses obligations, y compris à un manquement à une garantie que, pendant une certaine période, les marchandises resteront propres à leur usage normal ou à un usage spécial ou conserveront des qualités ou caractéristiques spécifiées.

*Article 37*

En cas de livraison anticipée, le vendeur a le droit, jusqu'à la date prévue pour la livraison, soit de livrer une partie ou une quantité manquante, ou des marchandises nouvelles en remplacement des marchandises non conformes au contrat, soit de réparer tout défaut de conformité des marchandises, à condition que l'exercice de ce droit ne cause à l'acheteur ni inconvénients ni frais déraisonnables. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

*Article 38*

1) L'acheteur doit examiner les marchandises ou les faire examiner dans un délai aussi bref que possible eu égard aux circonstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

#### *Article 39*

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

#### *Article 40*

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

#### *Article 41*

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

#### *Article 42*

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

- (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or
- (b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

- (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or



2) Si le contrat implique un transport des marchandises, l'examen peut être différé jusqu'à leur arrivée à destination.

3) Si les marchandises sont déroutées ou réexpédiées par l'acheteur sans que celui-ci ait eu raisonnablement la possibilité de les examiner et si, au moment de la conclusion du contrat, le vendeur connaissait ou aurait dû connaître la possibilité de ce déroutage ou de cette réexpédition, l'examen peut être différé jusqu'à l'arrivée des marchandises à leur nouvelle destination.

#### *Article 39*

1) L'acheteur est déchu du droit de se prévaloir d'un défaut de conformité s'il ne le dénonce pas au vendeur, en précisant la nature de ce défaut, dans un délai raisonnable à partir du moment où il l'a constaté ou aurait dû le constater.

2) Dans tous les cas, l'acheteur est déchu du droit de se prévaloir d'un défaut de conformité, s'il ne le dénonce pas au plus tard dans un délai de deux ans à compter de la date à laquelle les marchandises lui ont été effectivement remises, à moins que ce délai ne soit incompatible avec la durée d'une garantie contractuelle.

#### *Article 40*

Le vendeur ne peut pas se prévaloir des dispositions des articles 38 et 39 lorsque le défaut de conformité porte sur des faits qu'il connaissait ou ne pouvait ignorer et qu'il n'a pas révélés à l'acheteur.

#### *Article 41*

Le vendeur doit livrer les marchandises libres de tout droit ou prétention d'un tiers, à moins que l'acheteur n'accepte de prendre les marchandises dans ces conditions. Toutefois, si ce droit ou cette prétention est fondée sur la propriété industrielle ou autre propriété intellectuelle, l'obligation du vendeur est régie par l'article 42.

#### *Article 42*

1) Le vendeur doit livrer les marchandises libres de tout droit ou prétention d'un tiers fondé sur la propriété industrielle ou autre propriété intellectuelle, qu'il connaissait ou ne pouvait ignorer au moment de la conclusion du contrat, à condition que ce droit ou cette prétention soit fondé sur la propriété industrielle ou autre propriété intellectuelle :

- a) en vertu de la loi de l'État où les marchandises doivent être revendues ou utilisées, si les parties ont envisagé au moment de la conclusion du contrat que les marchandises seraient revendues ou utilisées dans cet État; ou
- b) dans tous les autres cas, en vertu de la loi de l'État où l'acheteur a son établissement.

2) Dans les cas suivants, le vendeur n'est pas tenu de l'obligation prévue au paragraphe précédent :

- a) au moment de la conclusion du contrat, l'acheteur connaissait ou ne pouvait ignorer l'existence du droit ou de la prétention; ou

- (b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

#### *Article 43*

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

#### *Article 44*

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

### *Section III. Remedies for breach of contract by the seller*

#### *Article 45*

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

- (a) exercise the rights provided in articles 46 to 52;
- (b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

#### *Article 46*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

- b) le droit ou la prétention résulte de ce que le vendeur s'est conformé aux plans techniques, dessins, formules ou autres spécifications analogues fournis par l'acheteur.

#### *Article 43*

1) L'acheteur perd le droit de se prévaloir des dispositions des articles 41 et 42 s'il ne dénonce pas au vendeur le droit ou la prétention du tiers, en précisant la nature de ce droit ou de cette prétention, dans un délai raisonnable à partir du moment où il en a eu connaissance ou aurait dû en avoir connaissance.

2) Le vendeur ne peut pas se prévaloir des dispositions du paragraphe précédent s'il connaissait le droit ou la prétention du tiers et sa nature.

#### *Article 44*

Nonobstant les dispositions du paragraphe 1 de l'article 39 et du paragraphe 1 de l'article 43, l'acheteur peut réduire le prix conformément à l'article 50 ou demander des dommages-intérêts, sauf pour le gain manqué, s'il a une excuse raisonnable pour n'avoir pas procédé à la dénonciation requise.

#### *Section III. Moyens dont dispose l'acheteur en cas de contravention au contrat par le vendeur.*

#### *Article 45*

1) Si le vendeur n'a pas exécuté l'une quelconque des obligations résultant pour lui du contrat de vente ou de la présente Convention, l'acheteur est fondé à :

- a) exercer les droits prévus aux articles 46 à 52;
- b) demander les dommages-intérêts prévus aux articles 74 à 77.

2) L'acheteur ne perd pas le droit de demander des dommages-intérêts lorsqu'il exerce son droit de recourir à un autre moyen.

3) Aucun délai de grâce ne peut être accordé au vendeur par un juge ou par un arbitre lorsque l'acheteur se prévaut d'un des moyens dont il dispose en cas de contravention au contrat.

#### *Article 46*

1) L'acheteur peut exiger du vendeur l'exécution de ses obligations, à moins qu'il ne se soit prévalu d'un moyen incompatible avec cette exigence.

2) Si les marchandises ne sont pas conformes au contrat, l'acheteur ne peut exiger du vendeur la livraison de marchandises de remplacement que si le défaut de conformité constitue une contravention essentielle au contrat et si cette livraison est demandée au moment de la dénonciation du défaut de conformité faite conformément à l'article 39 ou dans un délai raisonnable à compter de cette dénonciation.

3) Si les marchandises ne sont pas conformes au contrat, l'acheteur peut exiger du vendeur qu'il répare le défaut de conformité, à moins que cela ne soit déraisonnable compte tenu de toutes les circonstances. La réparation doit être demandée au moment de la dénonciation du défaut de conformité faite conformément à l'article 39 ou dans un délai raisonnable à compter de cette dénonciation.

*Article 47*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

*Article 48*

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

*Article 49*

(1) The buyer may declare the contract avoided:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

- (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
- (b) in respect of any breach other than late delivery, within a reasonable time:
  - (i) after he knew or ought to have known of the breach;

*Article 47*

1) L'acheteur peut impartir au vendeur un délai supplémentaire de durée raisonnable pour l'exécution de ses obligations.

2) À moins qu'il n'ait reçu du vendeur une notification l'informant que celui-ci n'exécuterait pas ses obligations dans le délai ainsi imparti, l'acheteur ne peut, avant l'expiration de ce délai, se prévaloir d'aucun des moyens dont il dispose en cas de contravention au contrat. Toutefois, l'acheteur ne perd pas, de ce fait, le droit de demander des dommages-intérêts pour retard dans l'exécution.

*Article 48*

1) Sous réserve de l'article 49, le vendeur peut, même après la date de la livraison, réparer à ses frais tout manquement à ses obligations, à condition que cela n'entraîne pas un retard déraisonnable et ne cause à l'acheteur ni inconvénients déraisonnables ni incertitude quant au remboursement par le vendeur des frais faits par l'acheteur. Toutefois, l'acheteur conserve le droit de demander des dommages-intérêts conformément à la présente Convention.

2) Si le vendeur demande à l'acheteur de lui faire savoir s'il accepte l'exécution et si l'acheteur ne lui répond pas dans un délai raisonnable, le vendeur peut exécuter ses obligations dans le délai qu'il a indiqué dans sa demande. L'acheteur ne peut, avant l'expiration de ce délai, se prévaloir d'un moyen incompatible avec l'exécution par le vendeur de ses obligations.

3) Lorsque le vendeur notifie à l'acheteur son intention d'exécuter ses obligations dans un délai déterminé, il est présumé demander à l'acheteur de lui faire connaître sa décision conformément au paragraphe précédent.

4) Une demande ou une notification faite par le vendeur en vertu des paragraphes 2 ou 3 du présent article n'a d'effet que si elle est reçue par l'acheteur.

*Article 49*

1) L'acheteur peut déclarer le contrat résolu :

- a) si l'inexécution par le vendeur de l'une quelconque des obligations résultant pour lui du contrat ou de la présente Convention constitue une contravention essentielle au contrat; ou
- b) en cas de défaut de livraison, si le vendeur ne livre pas les marchandises dans le délai supplémentaire imparti par l'acheteur conformément au paragraphe 1 de l'article 47 ou s'il déclare qu'il ne les livrera pas dans le délai ainsi imparti.

2) Cependant, lorsque le vendeur a livré les marchandises, l'acheteur est déchu du droit de déclarer le contrat résolu s'il ne l'a pas fait :

- a) en cas de livraison tardive, dans un délai raisonnable à partir du moment où il a su que la livraison avait été effectuée;
- b) en cas de contravention autre que la livraison tardive, dans un délai raisonnable :
  - (i) à partir du moment où il a eu connaissance ou aurait dû avoir connaissance de cette contravention;



- (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
- (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

#### *Article 50*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

#### *Article 51*

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

#### *Article 52*

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

### *CHAPTER III*

#### OBLIGATIONS OF THE BUYER

#### *Article 53*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

- (ii) après l'expiration de tout délai supplémentaire imparti par l'acheteur conformément au paragraphe 1 de l'article 47 ou après que le vendeur a déclaré qu'il n'exécute pas ses obligations dans ce délai supplémentaire; ou
- (iii) après l'expiration de tout délai supplémentaire indiqué par le vendeur conformément au paragraphe 2 de l'article 48 ou après que l'acheteur a déclaré qu'il n'accepterait pas l'exécution.

#### *Article 50*

En cas de défaut de conformité des marchandises au contrat, que le prix ait été ou non déjà payé, l'acheteur peut réduire le prix proportionnellement à la différence entre la valeur que les marchandises effectivement livrées avaient au moment de la livraison et la valeur que des marchandises conformes auraient eue à ce moment. Cependant, si le vendeur répare tout manquement à ses obligations conformément à l'article 37 ou à l'article 48 ou si l'acheteur refuse d'accepter l'exécution par le vendeur conformément à ces articles, l'acheteur ne peut réduire le prix.

#### *Article 51*

1) Si le vendeur ne livre qu'une partie des marchandises ou si une partie seulement des marchandises livrées est conforme au contrat, les articles 46 à 50 s'appliquent en ce qui concerne la partie manquante ou non conforme.

2) L'acheteur ne peut déclarer le contrat résolu dans sa totalité que si l'inexécution partielle ou le défaut de conformité constitue une contravention essentielle au contrat.

#### *Article 52*

1) Si le vendeur livre les marchandises avant la date fixée, l'acheteur a la faculté d'en prendre livraison ou de refuser d'en prendre livraison.

2) Si le vendeur livre une quantité supérieure à celle prévue au contrat, l'acheteur peut accepter ou refuser de prendre livraison de la quantité excédentaire. Si l'acheteur accepte d'en prendre livraison en tout ou en partie, il doit la payer au tarif du contrat.

### *CHAPITRE III*

#### *OBLIGATIONS DE L'ACHETEUR*

#### *Article 53*

L'acheteur s'oblige, dans les conditions prévues au contrat et par la présente Convention, à payer le prix et à prendre livraison des marchandises.

Section I. *Payment of the price*

*Article 54*

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

*Article 55*

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

*Article 56*

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

*Article 57*

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

*Article 58*

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

*Section I. Paiement du prix.**Article 54*

L'obligation qu'a l'acheteur de payer le prix comprend celle de prendre les mesures et d'accomplir les formalités destinées à permettre le paiement du prix qui sont prévues par le contrat ou par les lois et les règlements.

*Article 55*

Si la vente est valablement conclue sans que le prix des marchandises vendues ait été fixé dans le contrat expressément ou implicitement ou par une disposition permettant de le déterminer, les parties sont réputées, sauf indications contraires, s'être tacitement référées au prix habituellement pratiqué au moment de la conclusion du contrat, dans la branche commerciale considérée, pour les mêmes marchandises vendues dans des circonstances comparables.

*Article 56*

Si le prix est fixé d'après le poids des marchandises, c'est le poids net qui, en cas de doute, détermine ce prix.

*Article 57*

1) Si l'acheteur n'est pas tenu de payer le prix en un autre lieu particulier, il doit payer le vendeur :

- a) à l'établissement de celui-ci; ou
- b) si le paiement doit être fait contre la remise des marchandises ou des documents, au lieu de cette remise.

2) Le vendeur doit supporter toute augmentation des frais accessoires au paiement qui résultent de son changement d'établissement après la conclusion du contrat.

*Article 58*

1) Si l'acheteur n'est pas tenu de payer le prix à un autre moment déterminé, il doit le payer lorsque, conformément au contrat et à la présente Convention, le vendeur met à sa disposition soit les marchandises soit des documents représentatifs des marchandises. Le vendeur peut faire du paiement une condition de la remise des marchandises ou des documents.

2) Si le contrat implique un transport des marchandises, le vendeur peut en faire l'expédition sous condition que celles-ci ou les documents représentatifs ne seront remis à l'acheteur que contre paiement du prix.

3) L'acheteur n'est pas tenu de payer le prix avant d'avoir eu la possibilité d'examiner les marchandises, à moins que les modalités de livraison ou de paiement dont sont convenues les parties ne lui en laissent pas la possibilité.

*Article 59*

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

*Section II. Taking delivery**Article 60*

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

*Section III. Remedies for breach of contract by the buyer**Article 61*

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

*Article 62*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

*Article 63*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.



*Article 59*

L'acheteur doit payer le prix à la date fixée au contrat ou résultant du contrat et de la présente Convention, sans qu'il soit besoin d'aucune demande ou autre formalité de la part du vendeur.

*Section II. Prise de livraison.**Article 60*

L'obligation de l'acheteur de prendre livraison consiste :

- a) à accomplir tout acte qu'on peut raisonnablement attendre de lui pour permettre au vendeur d'effectuer la livraison; et
- b) à retirer les marchandises.

*Section III. Moyens dont dispose le vendeur en cas de contravention au contrat par l'acheteur.**Article 61*

1) Si l'acheteur n'a pas exécuté l'une quelconque des obligations résultant pour lui du contrat de vente ou de la présente Convention, le vendeur est fondé à :

- a) exercer les droits prévus aux articles 62 à 65;
- b) demander les dommages-intérêts prévus aux articles 74 à 77.

2) Le vendeur ne perd pas le droit de demander des dommages-intérêts lorsqu'il exerce son droit de recourir à un autre moyen.

3) Aucun délai de grâce ne peut être accordé à l'acheteur par un juge ou par un arbitre lorsque le vendeur se prévaut d'un des moyens dont il dispose en cas de contravention au contrat.

*Article 62*

Le vendeur peut exiger de l'acheteur le paiement du prix, la prise de livraison des marchandises ou l'exécution des autres obligations de l'acheteur, à moins qu'il ne se soit prévalu d'un moyen incompatible avec ces exigences.

*Article 63*

1) Le vendeur peut impartir à l'acheteur un délai supplémentaire de durée raisonnable pour l'exécution de ses obligations.

2) À moins qu'il n'ait reçu de l'acheteur une notification l'informant que celui-ci n'exécute pas ses obligations dans le délai ainsi imparti, le vendeur ne peut, avant l'expiration de ce délai, se prévaloir d'aucun des moyens dont il dispose en cas de contravention au contrat. Toutefois, le vendeur ne perd pas, de ce fait, le droit de demander des dommages-intérêts pour retard dans l'exécution.

*Article 64*

- (1) The seller may declare the contract avoided:
- (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
  - (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.
- (2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:
- (a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
  - (b) in respect of any breach other than late performance by the buyer, within a reasonable time:
    - (i) after the seller knew or ought to have known of the breach; or
    - (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

*Article 65*

- (1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
- (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

*CHAPTER IV**PASSING OF RISK**Article 66*

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

*Article 64*

1) Le vendeur peut déclarer le contrat résolu :

- a) si l'inexécution par l'acheteur de l'une quelconque des obligations résultant pour lui du contrat ou de la présente Convention constitue une contravention essentielle au contrat; ou
- b) si l'acheteur n'exécute pas son obligation de payer le prix ou ne prend pas livraison des marchandises dans le délai supplémentaire imparti par le vendeur conformément au paragraphe 1 de l'article 63 ou s'il déclare qu'il ne le fera pas dans le délai ainsi imparti.

2) Cependant, lorsque l'acheteur a payé le prix, le vendeur est déchu du droit de déclarer le contrat résolu s'il ne l'a pas fait :

- a) en cas d'exécution tardive par l'acheteur, avant d'avoir su qu'il y avait eu exécution; ou
- b) en cas de contravention pour l'acheteur autre que l'exécution tardive, dans un délai raisonnable :
  - (i) à partir du moment où le vendeur a eu connaissance ou aurait dû avoir connaissance de cette contravention; ou
  - (ii) après l'expiration de tout délai supplémentaire imparti par le vendeur conformément au paragraphe 1 de l'article 63 ou après que l'acheteur ait déclaré qu'il n'exécuterait pas ses obligations dans ce délai supplémentaire.

*Article 65*

1) Si le contrat prévoit que l'acheteur doit spécifier la forme, la mesure ou d'autres caractéristiques des marchandises et si l'acheteur n'effectue pas cette spécification à la date convenue ou dans un délai raisonnable à compter de la réception d'une demande du vendeur, celui-ci peut, sans préjudice de tous autres droits qu'il peut avoir, effectuer lui-même cette spécification d'après les besoins de l'acheteur dont il peut avoir connaissance.

2) Si le vendeur effectue lui-même la spécification, il doit en faire connaître les modalités à l'acheteur et lui impartir un délai raisonnable pour une spécification différente. Si, après réception de la communication du vendeur, l'acheteur n'utilise pas cette possibilité dans le délai ainsi imparti, la spécification effectuée par le vendeur est définitive.

*CHAPITRE IV***TRANSFERT DES RISQUES***Article 66*

La perte ou la détérioration des marchandises survenue après le transfert des risques à l'acheteur ne libère pas celui-ci de son obligation de payer le prix, à moins que ces événements ne soient dus à un fait du vendeur.

*Article 67*

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

*Article 68*

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

*Article 69*

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

*Article 70*

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

*Article 67*

1) Lorsque le contrat de vente implique un transport des marchandises et que le vendeur n'est pas tenu de les remettre en un lieu déterminé, les risques sont transférés à l'acheteur à partir de la remise des marchandises au premier transporteur pour transmission à l'acheteur conformément au contrat de vente. Lorsque le vendeur est tenu de remettre les marchandises à un transporteur en un lieu déterminé, les risques ne sont pas transférés à l'acheteur—tant que les marchandises n'ont pas été remises au transporteur en ce lieu. Le fait que le vendeur soit autorisé à conserver les documents représentatifs des marchandises n'affecte pas le transfert des risques.

2) Cependant, les risques ne sont pas transférés à l'acheteur tant que les marchandises n'ont pas été clairement identifiées aux fins du contrat, que ce soit par l'apposition d'un signe distinctif sur les marchandises, par des documents de transport, par un avis donné à l'acheteur ou par tout autre moyen.

*Article 68*

En ce qui concerne les marchandises vendues en cours de transport, les risques sont transférés à l'acheteur à partir du moment où le contrat est conclu. Toutefois, si les circonstances l'impliquent, les risques sont à la charge de l'acheteur à compter du moment où les marchandises ont été remises au transporteur qui a émis les documents constatant le contrat de transport. Néanmoins, si, au moment de la conclusion du contrat de vente, le vendeur avait connaissance du fait que les marchandises avaient péri ou avaient été détériorées et qu'il n'en a pas informé l'acheteur, la perte ou la détérioration est à la charge du vendeur.

*Article 69*

1) Dans les cas non visés par les articles 67 et 68, les risques sont transférés à l'acheteur lorsqu'il retire les marchandises ou, s'il ne le fait pas en temps voulu, à partir du moment où les marchandises sont mises à sa disposition et où il commet une contravention au contrat en n'en prenant pas livraison.

2) Cependant, si l'acheteur est tenu de retirer les marchandises en un lieu autre qu'un établissement du vendeur, les risques sont transférés lorsque la livraison est due et que l'acheteur sait que les marchandises sont mises à sa disposition en ce lieu.

3) Si la vente porte sur des marchandises non encore individualisées, les marchandises ne sont réputées avoir été mises à la disposition de l'acheteur que lorsqu'elles ont été clairement identifiées aux fins du contrat.

*Article 70*

Si le vendeur a commis une contravention essentielle au contrat, les dispositions des articles 67, 68 et 69 ne portent pas atteinte aux moyens dont l'acheteur dispose en raison de cette contravention.



*CHAPTER V***PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER  
AND OF THE BUYER***Section I. Anticipatory breach and instalment contracts**Article 71*

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

- (a) a serious deficiency in his ability to perform or in his creditworthiness; or
- (b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

*Article 72*

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

*Article 73*

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

*CHAPITRE V*

## DISPOSITIONS COMMUNES AUX OBLIGATIONS DU VENDEUR ET DE L'ACHETEUR

Section I. *Contravention anticipée et contrats à livraisons successives.*

-

*Article 71*

1) Une partie peut différer l'exécution de ses obligations lorsqu'il apparaît, après la conclusion du contrat, que l'autre partie n'exécutera pas une partie essentielle de ses obligations du fait :

- a) d'une grave insuffisance dans la capacité d'exécution de cette partie ou sa solvabilité; ou
- b) de la manière dont elle s'apprête à exécuter ou exécute le contrat.

2) Si le vendeur a déjà expédié les marchandises lorsque se révèlent les raisons prévues au paragraphe précédent, il peut s'opposer à ce que les marchandises soient remises à l'acheteur, même si celui-ci détient un document lui permettant de les obtenir. Le présent paragraphe ne concerne que les droits respectifs du vendeur et de l'acheteur sur les marchandises.

3) La partie qui diffère l'exécution, avant ou après l'expédition des marchandises, doit adresser immédiatement une notification à cet effet à l'autre partie, et elle doit procéder à l'exécution si l'autre partie donne des assurances suffisantes de la bonne exécution de ses obligations.

*Article 72*

1) Si, avant la date de l'exécution du contrat, il est manifeste qu'une partie commettra une contravention essentielle au contrat, l'autre partie peut déclarer celui-ci résolu.

2) Si elle dispose du temps nécessaire, la partie qui a l'intention de déclarer le contrat résolu doit le notifier à l'autre partie dans des conditions raisonnables pour lui permettre de donner des assurances suffisantes de la bonne exécution de ses obligations.

3) Les dispositions du paragraphe précédent ne s'appliquent pas si l'autre partie a déclaré qu'elle n'exécuterait pas ses obligations.

*Article 73*

1) Dans les contrats à livraisons successives, si l'inexécution par l'une des parties d'une obligation relative à une livraison constitue une contravention essentielle au contrat en ce qui concerne cette livraison, l'autre partie peut déclarer le contrat résolu pour ladite livraison.

2) Si l'inexécution par l'une des parties d'une obligation relative à une livraison donne à l'autre partie de sérieuses raisons de penser qu'il y aura contravention essentielle au contrat en ce qui concerne des obligations futures, elle peut déclarer le contrat résolu pour l'avenir, à condition de le faire dans un délai raisonnable.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

## Section II. *Damages*

### *Article 74*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

### *Article 75*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

### *Article 76*

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

### *Article 77*

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

3) L'acheteur qui déclare le contrat résolu pour une livraison peut, en même temps, le déclarer résolu pour les livraisons déjà reçues ou pour les livraisons futures si, en raison de leur connexité, ces livraisons ne peuvent être utilisées aux fins envisagées par les parties au moment de la conclusion du contrat.

## Section II. *Dommages-intérêts.*

### *Article 74*

Les dommages-intérêts pour une contravention au contrat commise par une partie sont égaux à la perte subie et au gain manqué par l'autre partie par suite de la contravention. Ces dommages-intérêts ne peuvent être supérieurs à la perte subie et au gain manqué que la partie en défaut avait prévu ou aurait dû prévoir au moment de la conclusion du contrat, en considérant les faits dont elle avait connaissance ou aurait dû avoir connaissance, comme étant des conséquences possibles de la contravention au contrat.

### *Article 75*

Lorsque le contrat est résolu et que, d'une manière raisonnable et dans un délai raisonnable après la résolution, l'acheteur a procédé à un achat de remplacement ou le vendeur à une vente compensatoire, la partie qui demande des dommages-intérêts peut obtenir la différence entre le prix du contrat et le prix de l'achat de remplacement ou de la vente compensatoire ainsi que tous autres dommages-intérêts qui peuvent être dus en vertu de l'article 74.

### *Article 76*

1) Lorsque le contrat est résolu et que les marchandises ont un prix courant, la partie qui demande des dommages-intérêts peut, si elle n'a pas procédé à un achat de remplacement ou à une vente compensatoire au titre de l'article 75, obtenir la différence entre le prix fixé dans le contrat et le prix courant au moment de la résolution ainsi que tous autres dommages-intérêts qui peuvent être dus au titre de l'article 74. Néanmoins, si la partie qui demande des dommages-intérêts a déclaré le contrat résolu après avoir pris possession des marchandises, c'est le prix courant au moment de la prise de possession qui est applicable et non pas le prix courant au moment de la résolution.

2) Aux fins du paragraphe précédent, le prix courant est celui du lieu où la livraison des marchandises aurait dû être effectuée ou, à défaut de prix courant en ce lieu, le prix courant pratiqué en un autre lieu qu'il apparaît raisonnable de prendre comme lieu de référence, en tenant compte des différences dans les frais de transport des marchandises.

### *Article 77*

La partie qui invoque la contravention au contrat doit prendre les mesures raisonnables, eu égard aux circonstances, pour limiter la perte, y compris le gain manqué, résultant de la contravention. Si elle néglige de le faire, la partie défaut peut demander une réduction des dommages-intérêts égale au montant de la perte qui aurait dû être évitée.

### Section III. *Interest*

#### *Article 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

### Section IV. *Exemptions*

#### *Article 79*

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

#### *Article 80*

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

### Section V. *Effects of avoidance*

#### *Article 81*

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.



*Section III. Intérêts.**Article 78*

Si une partie ne paie pas le prix ou toute autre somme due, l'autre partie a droit à des intérêts sur cette somme, sans préjudice des dommages-intérêts qu'elle serait fondée à demander en vertu de l'article 74.

*Section IV. Exonération.**Article 79*

1) Une partie n'est pas responsable de l'inexécution de l'une quelconque de ses obligations si elle prouve que cette inexécution est due à un empêchement indépendant de sa volonté et que l'on ne pouvait raisonnablement attendre d'elle qu'elle le prenne en considération au moment de la conclusion du contrat, qu'elle le prévienne ou le surmonte ou qu'elle en prévienne ou surmonte les conséquences.

2) Si l'inexécution par une partie est due à l'inexécution par un tiers qu'elle a chargé d'exécuter tout ou partie du contrat, cette partie n'est exonérée de sa responsabilité que dans le cas :

- a) où elle l'est en vertu des dispositions du paragraphe précédent; et
- b) où le tiers serait lui aussi exonéré si les dispositions de ce paragraphe lui étaient appliquées.

3) L'exonération prévue par le présent article produit effet pendant la durée de l'empêchement.

4) La partie qui n'a pas exécuté doit avertir l'autre partie de l'empêchement et de ses effets sur sa capacité d'exécuter. Si l'avertissement n'arrive pas à destination dans un délai raisonnable à partir du moment où la partie qui n'a pas exécuté a connu ou aurait dû connaître l'empêchement, celle-ci est tenue à des dommages-intérêts du fait de ce défaut de réception.

5) Les dispositions du présent article n'interdisent pas à une partie d'exercer tous ses droits autres que celui d'obtenir des dommages-intérêts en vertu de la présente Convention.

*Article 80*

Une partie ne peut pas se prévaloir d'une inexécution par l'autre partie dans la mesure où cette inexécution est due à un acte ou à une omission de sa part.

*Section V. Effets de la résolution.**Article 81*

1) La résolution du contrat libère les deux parties de leurs obligations, sous réserve des dommages-intérêts qui peuvent être dus. Elle n'a pas d'effet sur les stipulations du contrat relatives au règlement des différends ou aux droits et obligations des parties en cas de résolution.

2) La partie qui a exécuté le contrat totalement ou partiellement peut réclamer restitution à l'autre partie de ce qu'elle a fourni ou payé en exécution du contrat. Si les deux parties sont tenues d'effectuer des restitutions, elles doivent y procéder simultanément.

*Article 82*

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

- (a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;
- (b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or
- (c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

*Article 83*

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

*Article 84*

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

- (a) if he must make restitution of the goods or part of them; or
- (b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

*Section VI. Preservation of the goods**Article 85*

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

*Article 82*

1) L'acheteur perd le droit de déclarer le contrat résolu ou d'exiger du vendeur la livraison de marchandises de remplacement s'il lui est impossible de restituer les marchandises dans un état sensiblement identique à celui dans lequel il les a reçues.

2) Le paragraphe précédent ne s'applique pas :

- a) si l'impossibilité de restituer les marchandises ou de les restituer dans un état sensiblement identique à celui dans lequel l'acheteur les a reçues n'est pas due à un acte ou à une omission de sa part;
- b) si les marchandises ont péri ou sont détériorées, en totalité ou en partie, en conséquence de l'examen prescrit à l'article 38; ou
- c) si l'acheteur, avant le moment où il a constaté ou aurait dû constater le défaut de conformité, a vendu tout ou partie des marchandises dans le cadre d'une opération commerciale normale ou a consommé ou transformé tout ou partie des marchandises conformément à l'usage normal.

*Article 83*

L'acheteur qui a perdu le droit de déclarer le contrat résolu ou d'exiger du vendeur la livraison de marchandises de remplacement en vertu de l'article 82 conserve le droit de se prévaloir de tous les autres moyens qu'il tient du contrat et de la présente Convention.

*Article 84*

1) Si le vendeur est tenu de restituer le prix, il doit aussi payer des intérêts sur le montant de ce prix à compter du jour du paiement.

2) L'acheteur doit au vendeur l'équivalent de tout profit qu'il a retiré des marchandises ou d'une partie de celles-ci :

- a) lorsqu'il doit les restituer en tout ou en partie; ou
- b) lorsqu'il est dans l'impossibilité de restituer tout ou partie des marchandises ou de les restituer en tout ou en partie dans un état sensiblement identique à celui dans lequel il les a reçues et que néanmoins il a déclaré le contrat résolu ou a exigé du vendeur la livraison de marchandises de remplacement.

*Section VI. Conservation des marchandises.**Article 85*

Lorsque l'acheteur tarde à prendre livraison des marchandises ou qu'il n'en paie pas le prix, alors que le paiement du prix et la livraison doivent se faire simultanément, le vendeur, s'il a les marchandises en sa possession ou sous son contrôle, doit prendre les mesures raisonnables, eu égard aux circonstances, pour en assurer la conservation. Il est fondé à les retenir jusqu'à ce qu'il ait obtenu de l'acheteur le remboursement de ses dépenses raisonnables.

*Article 86*

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

*Article 87*

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

*Article 88*

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

## PART IV

## FINAL PROVISIONS

*Article 89*

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

*Article 86*

1) Si l'acheteur a reçu les marchandises et entend exercer tout droit de les refuser en vertu du contrat ou de la présente Convention, il doit prendre les mesures raisonnables, eu égard aux circonstances, pour en assurer la conservation. Il est fondé à les retenir jusqu'à ce qu'il ait obtenu du vendeur le remboursement de ses dépenses raisonnables.

2) Si les marchandises expédiées à l'acheteur ont été mises à sa disposition à leur lieu de destination et si l'acheteur exerce le droit de les refuser, il doit en prendre possession pour le compte du vendeur à condition de pouvoir le faire sans paiement du prix et sans inconvénient ou frais déraisonnables. Cette disposition ne s'applique pas si le vendeur est présent au lieu de destination ou s'il y a en ce lieu une personne ayant qualité pour prendre les marchandises en charge pour son compte. Les droits et obligations de l'acheteur qui prend possession des marchandises en vertu du présent paragraphe sont régis par le paragraphe précédent.

*Article 87*

La partie qui est tenue de prendre des mesures pour assurer la conservation des marchandises peut les déposer dans les magasins d'un tiers aux frais de l'autre partie, à condition que les frais qui en résultent ne soient pas déraisonnables.

*Article 88*

1) La partie qui doit assurer la conservation des marchandises conformément aux articles 85 ou 86 peut les vendre par tous moyens appropriés si l'autre partie a apporté un retard déraisonnable à prendre possession des marchandises ou à les reprendre ou à payer le prix ou les frais de leur conservation, sous réserve de notifier à cette autre partie, dans des conditions raisonnables, son intention de vendre.

2) Lorsque les marchandises sont sujettes à une détérioration rapide ou lorsque leur conservation entraînerait des frais déraisonnables, la partie qui est tenue d'assurer la conservation des marchandises conformément aux articles 85 ou 86 doit raisonnablement s'employer à les vendre. Dans la mesure du possible, elle doit notifier à l'autre partie son intention de vendre.

3) La partie qui vend les marchandises a le droit de retenir sur le produit de la vente un montant égal aux frais raisonnables de conservation et de vente des marchandises. Elle doit le surplus à l'autre partie.

## QUATRIÈME PARTIE

## DISPOSITIONS FINALES

*Article 89*

Le Secrétaire général de l'Organisation des Nations Unies est désigné comme dépositaire de la présente Convention.



*Article 90*

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

*Article 91*

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

*Article 92*

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

*Article 93*

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

*Article 90*

La présente Convention ne prévaut pas sur un accord international déjà conclu ou à conclure qui contient des dispositions concernant les matières régies par la présente Convention, à condition que les parties au contrat aient leur établissement dans les États parties à cet accord.

*Article 91*

1) La présente Convention sera ouverte à la signature à la séance de clôture de la Conférence des Nations Unies sur les contrats de vente internationale de marchandises et restera ouverte à la signature de tous les États au Siège de l'Organisation des Nations Unies, à New York, jusqu'au 30 septembre 1981.

2) La présente Convention est sujette à ratification, acceptation ou approbation par les États signataires.

3) La présente Convention sera ouverte à l'adhésion de tous les États qui ne sont pas signataires, à partir de la date à laquelle elle sera ouverte à la signature.

4) Les instruments de ratification, d'acceptation, d'approbation ou d'adhésion seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

*Article 92*

1) Tout État contractant pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer qu'il ne sera pas lié par la deuxième partie de la présente Convention ou qu'il ne sera pas lié par la troisième partie de la présente Convention.

2) Un État contractant qui fait, en vertu du paragraphe précédent, une déclaration à l'égard de la deuxième partie ou de la troisième partie de la présente Convention ne sera pas considéré comme étant un État contractant, au sens du paragraphe 1 de l'article premier de la Convention, pour les matières régies par la partie de la Convention à laquelle cette déclaration s'applique.

*Article 93*

1) Tout État contractant qui comprend deux ou plusieurs unités territoriales dans lesquelles, selon sa constitution, des systèmes de droit différents s'appliquent dans les matières régies par la présente Convention pourra, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, déclarer que la présente Convention s'appliquera à toutes ses unités territoriales ou seulement à l'une ou plusieurs d'entre elles et pourra à tout moment modifier cette déclaration en faisant une nouvelle déclaration.

2) Ces déclarations seront notifiées au dépositaire et désigneront expressément les unités territoriales auxquelles la Convention s'applique.

3) Si, en vertu d'une déclaration faite conformément au présent article, la présente Convention s'applique à l'une ou plusieurs des unités territoriales d'un État contractant, mais non pas à toutes, et si l'établissement d'une partie au contrat est situé dans cet État, cet établissement sera considéré,

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

#### *Article 94*

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

#### *Article 95*

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.

#### *Article 96*

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

#### *Article 97*

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

aux fins de la présente Convention, comme n'étant pas situé dans un État contractant, à moins qu'il ne soit situé dans une unité territoriale à laquelle la Convention s'applique.

4) Si un État contractant ne fait pas de déclaration en vertu du paragraphe 1 du présent article, la Convention s'appliquera à l'ensemble du territoire de cet État.

#### *Article 94*

1) Deux ou plusieurs États contractants qui, dans des matières régies par la présente Convention, appliquent des règles juridiques identiques ou voisines peuvent, à tout moment, déclarer que la Convention ne s'appliquera pas aux contrats de vente ou à leur formation lorsque les parties ont leur établissement dans ces États. De telles déclarations peuvent être faites conjointement ou être unilatérales et réciproques.

2) Un État contractant qui, dans des matières régies par la présente Convention, applique des règles juridiques identiques ou voisines de celles d'un ou de plusieurs États non contractants peut, à tout moment, déclarer que la Convention ne s'appliquera pas aux contrats de vente ou à leur formation lorsque les parties ont leur établissement dans ces États.

3) Lorsqu'un État à l'égard duquel une déclaration a été faite en vertu du paragraphe précédent devient par la suite un État contractant, la déclaration mentionnée aura, à partir de la date à laquelle la présente Convention entrera en vigueur à l'égard de ce nouvel État contractant, les effets d'une déclaration faite en vertu du paragraphe 1, à condition que le nouvel État contractant s'y associe ou fasse une déclaration unilatérale à titre réciproque.

#### *Article 95*

Tout État peut déclarer, au moment du dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion, qu'il ne sera pas lié par l'alinéa b) du paragraphe 1 de l'article premier de la présente Convention.

#### *Article 96*

Tout État contractant dont la législation exige que les contrats de vente soient conclus ou constatés par écrit peut à tout moment déclarer, conformément à l'article 12, que toute disposition de l'article 11, de l'article 29 ou de la deuxième partie de la présente Convention autorisant une forme autre que la forme écrite pour la conclusion, la modification ou la résiliation amiable d'un contrat de vente, ou pour toute offre, acceptation ou autre manifestation d'intention, ne s'applique pas dès lors que l'une des parties a son établissement dans cet État.

#### *Article 97*

1) Les déclarations faites en vertu de la présente Convention lors de la signature sont sujettes à confirmation lors de la ratification, de l'acceptation ou de l'approbation.

2) Les déclarations, et la confirmation des déclarations, seront faites par écrit et formellement notifiées au dépositaire.



(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

#### *Article 98*

No reservations are permitted except those expressly authorized in this Convention.

#### *Article 99*

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.



3) Les déclarations prendront effet à la date de l'entrée en vigueur de la présente Convention à l'égard de l'État déclarant. Cependant, les déclarations dont le dépositaire aura reçu notification formelle après cette date prendront effet le premier jour du mois suivant l'expiration d'un délai de six mois à compter de la date de leur réception par le dépositaire. Les déclarations unilatérales et réciproques faites en vertu de l'article 94 prendront effet le premier jour du mois suivant l'expiration d'une période de six mois après la date de la réception de la dernière déclaration par le dépositaire.

4) Tout État qui fait une déclaration en vertu de la présente Convention peut à tout moment la retirer par une notification formelle adressée par écrit au dépositaire. Ce retrait prendra effet le premier jour du mois suivant l'expiration d'une période de six mois après la date de réception de la notification par le dépositaire.

5) Le retrait d'une déclaration faite en vertu de l'article 94 rendra caduque, à partir de la date de sa prise d'effet, toute déclaration réciproque faite par un autre État en vertu de ce même article.

#### *Article 98*

Aucune réserve n'est autorisée autre que celles qui sont expressément autorisées par la présente Convention.

#### *Article 99*

1) La présente Convention entrera en vigueur, sous réserve des dispositions du paragraphe 6 du présent article, le premier jour du mois suivant l'expiration d'une période de douze mois après la date du dépôt du dixième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, y compris tout instrument contenant une déclaration faite en vertu de l'article 92.

2) Lorsqu'un État ratifiera, acceptera ou approuvera la présente Convention ou y adhérera après le dépôt du dixième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, la Convention, à l'exception de la partie exclue, entrera en vigueur à l'égard de cet État, sous réserve des dispositions du paragraphe 6 du présent article, le premier jour du mois suivant l'expiration d'une période de douze mois après la date du dépôt de l'instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

3) Tout État qui ratifiera, acceptera ou approuvera la présente Convention ou y adhérera et qui est partie à la Convention portant loi uniforme sur la formation des contrats de vente internationale des objets mobiliers corporels faite à La Haye le 1<sup>er</sup> juillet 1964 (Convention de La Haye de 1964 sur la formation) ou à la Convention portant loi uniforme sur la vente internationale des objets mobiliers corporels faite à La Haye le 1<sup>er</sup> juillet 1964 (Convention de La Haye de 1964 sur la vente), ou à ces deux conventions, dénoncera en même temps, selon le cas, la Convention de La Haye de 1964 sur la vente ou la Convention de La Haye sur la formation, ou ces deux conventions, en adressant une notification à cet effet au Gouvernement néerlandais.

4) Tout État partie à la Convention de La Haye de 1964 sur la vente qui ratifiera, acceptera ou approuvera la présente Convention ou y adhérera et qui déclarera ou aura déclaré en vertu de l'article 92 qu'il n'est pas lié par la deuxième partie de la Convention, dénoncera, au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, la Convention de La Haye de 1964 sur la vente en adressant une notification à cet effet au Gouvernement néerlandais.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

#### *Article 100*

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

#### *Article 101*

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

5) Tout État partie à la Convention de La Haye de 1964 sur la vente qui ratifiera, acceptera ou approuvera la présente Convention ou y adhérera et qui déclarera ou aura déclaré en vertu de l'article 92 qu'il n'est pas lié par la troisième partie de la Convention, dénoncera, au moment de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, la Convention de La Haye de 1964 sur la formation en adressant une notification à cet effet au Gouvernement néerlandais.

6) Aux fins du présent article, les ratifications, acceptations, approbations et adhésions effectuées à l'égard de la présente Convention par des États parties à la Convention de La Haye de 1964 sur la formation ou à la Convention de La Haye de 1964 sur la vente ne prendront effet qu'à la date à laquelle les dénonciations éventuellement requises de la part desdits États à l'égard de ces deux conventions auront elles-mêmes pris effet. Le dépositaire de la présente Convention s'entendra avec le Gouvernement néerlandais, dépositaire des conventions de 1964, pour assurer la coordination nécessaire à cet égard.

#### *Article 100*

1) La présente Convention s'applique à la formation des contrats conclus à la suite d'une proposition intervenue après l'entrée en vigueur de la Convention à l'égard des États contractants visés à l'alinéa a) du paragraphe 1 de l'article premier ou de l'État contractant visé à l'alinéa b) du paragraphe 1 de l'article premier.

2) La présente Convention s'applique uniquement aux contrats conclus après son entrée en vigueur à l'égard des États contractants visés à l'alinéa a) du paragraphe 1 de l'article premier ou de l'État contractant visé à l'alinéa b) du paragraphe 1 de l'article premier.

#### *Article 101*

1) Tout État contractant pourra dénoncer la présente Convention, ou la deuxième ou la troisième partie de la Convention, par une notification formelle adressée par écrit au dépositaire.

2) La dénonciation prendra effet le premier jour du mois suivant l'expiration d'une période de douze mois après la date de réception de la notification par le dépositaire. Lorsqu'une période plus longue pour la prise d'effet de la dénonciation est spécifiée dans la notification, la dénonciation prendra effet à l'expiration de la période en question après la date de réception de la notification.

FAIT à Vienne, le onze avril mil neuf cent quatre-vingt, en un seul original, dont les textes anglais, arabe, chinois, espagnol, français et russe sont également authentiques.

EN FOI DE QUOI les plénipotentiaires soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé la présente Convention.



# Bill 91

## An Act to amend the Election Act, 1984

Mr. Sterling



---

<i>1st Reading</i>	December 22nd, 1987
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	

---



#### EXPLANATORY NOTE

The Bill extends proxy voting rights to persons away for personal reasons.

**Bill 91****1987****An Act to amend the Election Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 17 (1) of the *Election Act, 1984*, being chapter 54, is amended by adding “or” at the end of clause (g) and by adding thereto the following clause:

(h) personal travel plans,

. . . . .

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** The short title of this Act is the *Election Amendment Act, 1987*. Short title



# Bill 92

## **An Act to prevent unjust enrichment through the Financial Exploitation of Crime**

Mr. Wildman



*1st Reading*      January 6th, 1988

*2nd Reading*

*3rd Reading*

*Royal Assent*

### EXPLANATORY NOTE

The Bill makes moneys earned by accused criminals from the sale of their memoirs payable to the Criminal Injuries Compensation Board, which uses the funds received in each case to satisfy judgments obtained by victims of the crime.



**Bill 92**

**1988**

**An Act to prevent unjust enrichment through  
the Financial Exploitation of Crime**

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts as  
follows:

**1.** In this Act,

Definitions

“Board” means the Criminal Injuries Compensation Board  
established under the *Compensation for Victims of Crime*  
*Act*;

R.S.O. 1980,  
c. 82

“broadcast” means information transmitted by cables, wires,  
fibre-optic linkages, laser beams or any form of wireless  
radioelectric communication employing Hertzian waves;

“person accused or convicted of a crime” includes,

- (a) a person who has been charged with a crime,
- (b) a person who has been convicted of a crime, and
- (c) a person who has admitted the commission of a  
crime for which the person has not been prosecut-  
ed;

“victim” means a person who suffers injury, damage or pecu-  
niary loss as a direct result of a crime.

**2.—(1)** Every person who makes a contract with a person  
accused or convicted of a crime, or with the person’s agent or  
assignee, with respect to a book, magazine or newspaper arti-  
cle, broadcast, tape recording, phonograph recording, video  
recording, live presentation or other representation based  
upon or concerning the crime shall,

Payments  
to Board

- (a) provide the Board with a written copy of the con-  
tract; and

- (b) pay to the Board any moneys which would, under the contract, be payable to the person accused or convicted of the crime, his agent or nominee.

List to  
be public

(2) The Board shall maintain a complete list of all persons in respect of whom it receives moneys under subsection (1) and shall make the list available to the public upon request.

Board to  
hold funds

**3.**—(1) The Board shall hold all moneys received under subsection 2 (1) in a special account, which may be an interest-bearing account, shall keep full records as to their source and disbursement and shall deal with the moneys in accordance with this Act.

Interest

(2) Interest earned on moneys received under subsection 2 (1) forms part of the moneys to be dealt with by the Board in accordance with this Act.

Notice  
to victims

**4.**—(1) Where the Board first receives moneys under subsection 2 (1) in respect of a particular crime, it shall publish, in a newspaper circulated in the community where the crime was committed or alleged to have been committed, at least once every week for four weeks, a notice advising victims of the crime that it holds the moneys and of their rights under this Act.

Idem

(2) The Board may give such further notice to victims as it considers advisable.

Victim  
may sue  
1986, c. 4  
R.S.O. 1980,  
c. 240

**5.**—(1) Despite subsection 61 (4) of the *Family Law Act*, 1986 and section 45 of the *Limitations Act*, a victim may bring an action for the recovery of damages against the person accused or convicted of the crime within five years after the date on which the Board first received moneys under subsection 2 (1) in respect of the crime.

Notice  
to Board

(2) A victim who commences an action for damages against the person accused or convicted of the crime shall provide the Board with a copy of the statement of claim.

Payment  
to victim

**6.**—(1) Where a victim obtains judgment in an action for damages commenced against the person accused or convicted of the crime, the Board, after a day five years and six months after the day the Board first received moneys under this Act, shall pay the amount of the judgment and costs to the victim from the funds it holds under this Act.

Action for  
damages

(2) Where, on the day named in subsection (1), the Board has notice that a victim has commenced an action for damages against the person accused or convicted of the crime and that

the action has not been finally disposed of, the Board shall not make a payment under subsection (1) until the action has been finally disposed of.

(3) Where the aggregate amount of judgments and costs in respect of a particular crime exceeds the moneys received by the Board in respect of the crime, the Board shall distribute the moneys to the victims on a *pro rata* basis.

When funds  
insufficient

**7.**—(1) Where, on a day five years and six months after the day the Board first received moneys under this Act in respect of a particular crime, the Board has not been notified of an action commenced against the person accused or convicted of the crime during the five-year period described in subsection 5 (1), the Board shall release the moneys to the person accused or convicted of the crime.

Release of  
funds where  
no victim  
sues

(2) Where, after the Board has paid the full amounts of all judgments and costs payable to victims of a particular crime in accordance with this Act, the Board retains a balance of moneys received in respect of the crime, the Board shall pay the balance to the person accused or convicted of the crime.

Balance after  
judgments  
satisfied

**8.** Every person who contravenes section 2 of this Act is guilty of an offence and upon conviction is liable to a fine not exceeding \$5,000.

Penalty

**9.** Nothing in this Act affects the power of the Board to award compensation to a victim under the *Compensation for Victims of Crime Act*.

Board's  
power under  
R.S.O. 1980,  
c. 82

**10.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**11.** The short title of this Act is the *Profits from Crime Act, 1988*.

Short title









# Bill 93

**An Act to revise the  
Justices of the Peace Act**

The Hon. I. Scott  
*Attorney General*

*1st Reading*      January 6th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

# Projet de loi 93

**Loi portant révision de la  
Loi sur les juges de paix**

L'honorable I. Scott  
*procureur général*

*1<sup>re</sup> lecture*      6 janvier 1988  
*2<sup>e</sup> lecture*  
*3<sup>e</sup> lecture*  
*sanction royale*

## EXPLANATORY NOTES

This revision of the *Justices of the Peace Act* deals with recommendations of Professor Alan Mewett's 1981 report to the Attorney General entitled "The Office and Function of Justices of the Peace in Ontario" as well as with concerns expressed about the independence of justices of the peace.

The Bill distinguishes between presiding and non-presiding justices of the peace. The Lieutenant Governor in Council is given the power to appoint justices of the peace and determine whether a justice is presiding or non-presiding on the recommendation of the Attorney General. Justices of the peace who now preside over Provincial Offences Courts are deemed to be presiding justices and the Lieutenant Governor in Council is given the power to designate other justices already appointed as presiding or non-presiding on the recommendation of the Review Council.

Provision is made for the Lieutenant Governor in Council to appoint a provincial judge as Co-ordinator of Justices of the Peace. The Co-ordinator is given general supervision and direction over sittings of justices of the peace and assigns their duties, subject to the authority of the chief judges. Certain duties are not to be assigned to presiding and non-presiding justices. The Co-ordinator is empowered to issue directions on matters of law and procedure that are binding on all justices of the peace.

Justices of the peace are no longer paid on the basis of fees for services. Part-time justices are to work according to a duty roster and to report the details of duties they perform to the Co-ordinator. Salaries of part-time justices are based on the Co-ordinator's determination of their workload and calculated in accordance with the regulations.

A justice can be removed from office only if,

1. a complaint is made to the Review Council,
2. an inquiry is then held by a provincial judge, and
3. following a recommendation by the judge, the Lieutenant Governor in Council orders the removal.

The Review Council is restructured to include the chief judges of the criminal and family divisions of the Provincial Court, the Co-ordinator, a justice of the peace appointed by the Lieutenant Governor in Council and not more than two other persons appointed by the Lieutenant Governor in Council. The Review Council is authorized to consider proposed appointments and to investigate complaints.

Justices of the peace are given the same immunity from liability as judges. Retirement age provisions are made to apply to all justices of the peace.

A provision in the *Mining Act* making specified officials *ex officio* justices of the peace is repealed. The *Election Act, 1984* is amended to add justices of the peace to the list of persons who shall not be appointed or act as returning officers, election clerks, deputy returning officers or poll clerks. A provision in the *Legislative Assembly Act* is amended to make justices of the peace ineligible to be members of the Assembly.

## NOTES EXPLICATIVES

La présente révision de la *Loi sur les juges de paix* traite des recommandations du rapport intitulé «The Office and Function of Justices of the Peace in Ontario», présenté par le professeur Alan Mewett en 1981, ainsi que des questions qui ont été soulevées au sujet de l'indépendance des juges de paix.

Le projet de loi fait la distinction entre les juges de paix-présidents et les juges de paix non-présidents. Il est conféré au lieutenant-gouverneur en conseil le pouvoir de nommer des juges de paix et de décider si un juge de paix appartiendra à la catégorie des juges de paix-présidents ou non-présidents, sur la recommandation du procureur général. Les juges de paix qui président actuellement la Cour des infractions provinciales sont réputés des juges de paix-présidents. Il est conféré au lieutenant-gouverneur en conseil le pouvoir de désigner d'autres juges de paix déjà nommés comme appartenant à la catégorie des juges de paix-présidents ou non-présidents, sur la recommandation du Conseil d'évaluation.

Le projet de loi prévoit que le lieutenant-gouverneur en conseil nommera un juge d'une cour provinciale en tant que coordonnateur des juges de paix. Ce dernier est chargé de l'administration et de la surveillance des sessions des juges de paix et de l'assignation de leurs fonctions, sous réserve de l'autorité qu'exercent les juges en chef. Certaines fonctions ne sont pas affectées aux juges de paix-présidents et non-présidents. Il est également conféré au coordonnateur le pouvoir de donner des directives, portant sur des questions de droit et de procédure, qui lient les juges de paix.

La rémunération des juges de paix ne se fait plus sous forme d'honoraires. Les juges de paix à temps partiel travaillent selon un tableau de service et font rapport au coordonnateur des fonctions qu'ils remplissent. Les salaires des juges de paix à temps partiel, qui correspondent à l'évaluation de leurs charges de travail que fait le coordonnateur, sont calculés conformément aux règlements.

Le juge de paix ne peut être destitué que si :

1. le Conseil d'évaluation est saisi d'une plainte,
2. un juge d'une cour provinciale tient ensuite une enquête,
3. à la suite de la recommandation du juge, le lieutenant-gouverneur en conseil, par décret, destitue le juge de paix.

La structure du Conseil d'évaluation est modifiée afin d'inclure les juges en chef des divisions criminelle et de la famille de la Cour provinciale, le coordonnateur, un juge de paix nommé par le lieutenant-gouverneur en conseil et deux autres personnes, au plus, nommées par le lieutenant-gouverneur en conseil. Le Conseil d'évaluation étudie les candidatures et fait enquête sur les plaintes.

Les juges de paix ont la même immunité que les juges en ce qui concerne la responsabilité personnelle. Les dispositions portant sur la retraite s'appliquent maintenant à tous les juges de paix.

Est abrogée la disposition de la *Loi sur les mines* qui confère à certains fonctionnaires le statut de juges de paix d'office. La *Loi électorale de 1984* est modifiée afin d'ajouter les juges de paix à la catégorie des personnes qui ne sont pas nommées directeurs du scrutin, secrétaires du scrutin, scrutateurs ou secrétaires du bureau de vote, ni n'agissent à ces divers titres. Une disposition de la *Loi sur l'Assemblée législative* est modifiée à l'effet que les juges de paix sont désormais inhabiles à être membres de l'Assemblée.

**Bill 93****1988****An Act to revise the Justices of the Peace Act****CONTENTS**

<b>Section</b>	<b>Section</b>
1. Definitions	13. Co-ordinator
2. Appointment of justices	14. Assignment of duties to presiding justice
3. Oath of office	15. Assignment of duties to non- presiding justice
4. Designation as presiding or non- presiding justice	16. Jurisdiction of justices
5. <i>Ex-officio</i> justices	17. Salaries of part-time justices
6. Retirement	18. Directions
7. Resignation	19. Immunity from liability
8. Removal from office	20. Regulations
9. Review Council	21-27. Complementary amendments and repeals
10. Functions	28. Commencement
11. Investigation of complaints by Review Council	29. Short title
12. Inquiry by provincial judge	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions	<b>1.</b> In this Act,
"coordon- nateur"	"Co-ordinator" means the Co-ordinator of Justices of the Peace appointed under section 13;
"juge de paix non-prési- dent"	"non-presiding justice of the peace" means a person designated as a non-presiding justice of the peace under section 4;
"prescrit"	"prescribed" means prescribed by the regulations;
"juge de paix-prési- dent"	"presiding justice of the peace" means a person designated as a presiding justice of the peace under section 4;
"règlements"	"regulations" means the regulations made under this Act;
"Conseil d'évaluation"	"Review Council" means the Justices of the Peace Review Council continued by section 9.
Appointment of justices	<b>2.</b> —(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint full-time and part-time justices of the peace.



Projet de loi 93

1988

Loi portant révision de la Loi sur les juges de paix

TABLE DES MATIÈRES

Article	Article
1 Définitions	13 Coordonnateur
2 Nomination des juges de paix	14 Assignment des fonctions au juge de paix-président
3 Serment d'entrée en fonction	15 Assignment des fonctions au juge de paix non-président
4 Désignation à titre de juge de paix-président ou non-président	16 Compétence des juges de paix
5 Juges de paix d'office	17 Traitements des juges de paix à temps partiel
6 Retraite	18 Directives
7 Démission	19 Immunité
8 Destitution	20 Règlements
9 Conseil d'évaluation	21 à 27 Modifications supplémentaires et abrogations
10 Fonctions	28 Entrée en vigueur
11 Enquête du Conseil d'évaluation sur les plaintes	29 Titre abrégé
12 Enquête du juge d'une cour provinciale	

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

- 1 Les définitions qui suivent s'appliquent à la présente loi.

Définitions
- «Conseil d'évaluation» Le Conseil d'évaluation des juges de paix maintenu en fonction par l'article 9.

«Review Council»
- «coordonnateur» Le coordonnateur des juges de paix nommé en vertu de l'article 13.

«Co-ordinator»
- «juge de paix non-président» Personne désignée comme juge de paix non-président en vertu de l'article 4.

«non-presiding justice of the peace»
- «juge de paix-président» Personne désignée comme juge de paix-président en vertu de l'article 4.

«presiding justice of the peace»
- «prescrit» Prescrit par les règlements.

«prescribed»
- «règlements» Les règlements pris en application de la présente loi.

«regulations»
- 2 (1) Le lieutenant-gouverneur en conseil peut, sur la recommandation du procureur général, nommer des juges de paix à temps plein et à temps partiel.

Nomination des juges de paix

## Transition

R.S.O. 1980,  
c. 227

(2) Every person who receives a salary as a justice of the peace in accordance with subsection 7 (2) of the *Justices of the Peace Act* immediately before this Act comes into force shall be deemed to have been appointed as a full-time justice of the peace and every other person who is a justice of the peace immediately before this Act comes into force shall be deemed to have been appointed as a part-time justice of the peace.

Reappoint-  
ment as  
part-time

(3) The Lieutenant Governor in Council shall not appoint a full-time justice of the peace to be a part-time justice of the peace unless the Review Council recommends the reappointment.

## Other work

(4) A full-time justice of the peace shall not engage in any other remunerative work.

Oath of  
office

3. Every justice of the peace, before beginning the duties of office, shall make the following oath or affirmation in French or in English:

I, ....., solemnly swear (affirm) that I will faithfully and to the best of my skill and knowledge, execute the duties of a justice of the peace, and I will do so without fear or favour, affection or ill will. So help me God. (Omit last sentence in an affirmation.)

Presiding or  
non-presiding

4.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall designate every justice of the peace appointed after the coming into force of this Act as a presiding justice of the peace or a non-presiding justice of the peace.

Deemed  
designation

(2) Every justice of the peace authorized to preside at the trial of an offence described in clause 15 (c) (provincial offences) immediately before this Act comes into force and has not attained the age of seventy at that time shall be deemed to have been designated as a presiding justice of the peace.

Designation  
of other  
justices

(3) The Lieutenant Governor in Council, on the recommendation of the Review Council, may designate any other justice of the peace who is appointed before this Act comes into force and has not attained the age of seventy as a presiding justice of the peace or a non-presiding justice of the peace.

Undesignated  
justices

(4) A person appointed as a justice of the peace before this Act comes into force who is not designated under subsection (2) or (3) shall not exercise any authority or receive any remuneration as a justice of the peace.

(2) Les personnes qui reçoivent un traitement à titre de juge de paix conformément au paragraphe 7 (2) de la *Loi sur les juges de paix* immédiatement avant l'entrée en vigueur de la présente loi sont réputées avoir été nommées juges de paix à temps plein. Les autres personnes qui sont juges de paix immédiatement avant l'entrée en vigueur de la présente loi sont réputées avoir été nommées juges de paix à temps partiel.

Disposition  
transitoire  
L. R. O. 1980,  
chap. 227

(3) Le lieutenant-gouverneur en conseil ne nomme pas un juge de paix à temps plein pour qu'il devienne juge de paix à temps partiel, à moins que le Conseil d'évaluation ne recommande cette nouvelle nomination.

Nouvelle  
nomination à  
temps partiel

(4) Le juge de paix à temps plein n'entreprend aucun autre travail rémunéré.

Autres  
fonctions

**3** Avant d'entrer en fonction, le juge de paix fait la prestation de serment ou l'affirmation solennelle suivante, en français ou en anglais :

Serment  
d'entrée en  
fonction

Je soussigné(e),....., déclare sous serment (affirme) que j'accomplirai fidèlement et de mon mieux les fonctions de juge de paix, et que j'agirai sans peur ni favoritisme, parti pris ni mauvaise volonté. Ainsi que Dieu me soit en aide. (S'il s'agit d'une affirmation, ne pas ajouter la dernière phrase.)

**4** (1) Le lieutenant-gouverneur en conseil, sur la recommandation du procureur général, désigne chaque juge de paix nommé après l'entrée en vigueur de la présente loi à titre de juge de paix-président ou juge de paix non-président.

Juge de paix-  
président ou  
non-président

(2) Sont réputées avoir été désignées à titre de juges de paix-présidents les juges de paix autorisés à présider le procès relatif à une infraction décrite à l'alinéa 15 c) (infractions provinciales) immédiatement avant l'entrée en vigueur de la présente loi et qui n'ont pas, à ce moment, atteint l'âge de soixante-dix ans.

Désignation  
réputée

(3) Le lieutenant-gouverneur en conseil, sur la recommandation du Conseil d'évaluation, peut désigner d'autres juges de paix nommés avant l'entrée en vigueur de la présente loi et qui n'ont pas atteint l'âge de soixante-dix ans à titre de juges de paix-présidents ou non-présidents.

Désignation  
d'autres juges  
de paix

(4) La personne qui a été nommée juge de paix avant l'entrée en vigueur de la présente loi, mais qui n'est pas désignée aux termes du paragraphe (2) ou (3), n'exerce aucune compétence d'un juge de paix et ne reçoit aucune rémunération à ce titre.

Juges de paix  
non désignés

Change of  
designation

(5) The Lieutenant Governor in Council shall not change the designation of a presiding justice of the peace to that of non-presiding justice of the peace.

Justices of  
the peace,  
*ex officio*

5. Every judge of the Supreme Court of Canada, the Federal Court of Canada, the Supreme Court of Ontario and the District Court of Ontario and every provincial judge is by virtue of his or her office a justice of the peace and also has power to do alone whatever two or more justices of the peace are authorized to do together.

Retirement

6. Every justice of the peace shall retire upon attaining the age of seventy years.

Resignation

7.—(1) A justice of the peace may resign from his or her office by delivering a signed letter of resignation to the Attorney General.

Effective  
date

(2) The resignation takes effect on the day the letter is delivered to the Attorney General or, if the letter specifies a later day, on that day.

Removal  
from office

8.—(1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

Grounds for  
removal

(2) The order may be made only if,

- (a) a complaint regarding the justice of the peace has been made to the Review Council; and
- (b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) infirmity,
  - (ii) conduct that is incompatible with the execution of the duties of his or her office, or
  - (iii) having failed to perform the duties of his or her office as assigned.

Order to be  
tabled

(3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.



(5) Le lieutenant-gouverneur en conseil ne change pas la désignation du juge de paix-président en celle de juge de paix non-président.

Changement  
de la désigna-  
tion

5 Sont juges de paix d'office les juges de la Cour suprême du Canada, de la Cour fédérale du Canada, de la Cour suprême de l'Ontario et de la Cour de district de l'Ontario, ainsi que les juges des cours provinciales. En outre, chacun d'eux a le pouvoir d'accomplir seul les actes que deux ou plusieurs juges de paix sont autorisés à accomplir ensemble.

Juges de paix  
d'office

6 Le juge de paix prend sa retraite à l'âge de soixante-dix ans.

Retraite

7 (1) Le juge de paix peut démissionner en remettant au procureur général une lettre signée à cet effet.

Démission

(2) La démission prend effet le jour où elle est remise au procureur général ou, si la lettre de démission précise un jour postérieur, elle prend effet ce jour.

Date de prise  
d'effet

8 (1) Le juge de paix ne peut être destitué que par décret du lieutenant-gouverneur en conseil.

Destitution

(2) Le décret ne peut être pris que si :

Motifs per-  
mettant la  
destitution

a) une plainte à son sujet a été portée au Conseil d'évaluation;

b) sa destitution est recommandée, à la suite d'une enquête tenue aux termes de l'article 12, en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

(i) il souffre d'une infirmité,

(ii) sa conduite est incompatible avec l'exercice de ses fonctions,

(iii) il n'a pas rempli les fonctions qui lui sont assignées.

(3) Le décret est déposé devant l'Assemblée législative si elle siège, sinon, dans les quinze jours qui suivent le début de la session suivante.

Dépôt du  
décret



Review  
Council

**9.**—(1) The Justices of the Peace Review Council is continued and shall be composed of,

- (a) the Chief Judge of the Provincial Court (Criminal Division) who shall preside over the Review Council;
- (b) the Chief Judge of the Provincial Court (Family Division);
- (c) the Co-ordinator;
- (d) a justice of the peace appointed by the Lieutenant Governor in Council; and
- (e) not more than two other persons appointed by the Lieutenant Governor in Council.

Quorum

(2) A majority of members of the Review Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Review Council.

Staff

R.S.O. 1980,  
c. 418

(3) Such officers and employees of the Review Council as are considered necessary may be appointed under the *Public Service Act*.

Expert  
assistance

(4) The Review Council may engage persons, including counsel, to assist it in its investigations.

Functions

**10.**—(1) The functions of the Review Council are,

- (a) to consider all proposed appointments and designations of justices of the peace and make reports concerning them to the Attorney General;
- (b) to receive and investigate complaints against justices of the peace.

Liability for  
damages

(2) No action or other proceeding for damages shall be instituted against the Review Council or its members or officers or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty.

Investigation  
of complaints

**11.**—(1) When the Review Council receives a complaint against a justice of the peace, it shall take such action to investigate the complaint, including a review of it with the justice of the peace, as it considers advisable.

**9** (1) Le Conseil d'évaluation des juges de paix est maintenu et se compose des membres suivants : Conseil d'évaluation

- a) le juge en chef de la Cour provinciale (Division criminelle), qui préside le Conseil;
- b) le juge en chef de la Cour provinciale (Division de la famille);
- c) le coordonnateur;
- d) un juge de paix nommé par le lieutenant-gouverneur en conseil;
- e) deux autres personnes, au plus, nommées par le lieutenant-gouverneur en conseil.

(2) La majorité des membres du Conseil d'évaluation constitue le quorum et peut exercer tous les pouvoirs et la compétence du Conseil. Quorum

(3) Les employés du Conseil jugés nécessaires peuvent être engagés aux termes de la *Loi sur la fonction publique*. Personnel  
L.R.O. 1980,  
chap. 418

(4) Le Conseil d'évaluation peut engager d'autres personnes, notamment des avocats, pour l'aider dans ses enquêtes. Experts

**10** (1) Les fonctions du Conseil d'évaluation sont les suivantes : Fonctions

- a) examiner les candidatures aux postes de juges de paix, ainsi que leurs désignations proposées, et en faire rapport au procureur général;
- b) recevoir les plaintes portées contre les juges de paix et faire enquête à leur sujet.

(2) Aucune action ou poursuite en dommages-intérêts ne peut être intentée contre le Conseil d'évaluation, ses membres ou employés ni contre quiconque agit sous son autorité, à l'égard d'un acte accompli de bonne foi dans l'exercice ou en vue de l'exercice de ses fonctions. Responsabilité  
pour dommages-intérêts

**11** (1) Lorsque le Conseil d'évaluation reçoit une plainte contre un juge de paix, il prend les mesures qu'il estime opportunes pour faire enquête. Ces mesures peuvent comprendre une discussion de la plainte avec le juge de paix. Enquête sur  
les plaintes

Referral to  
Co-ordinator

(2) The Review Council may, if it considers it appropriate to do so, transmit complaints to the Co-ordinator.

Proceedings  
not public

(3) The proceedings of the Review Council shall not be public, but it may inform the Attorney General that it has undertaken an investigation and the Attorney General may make that fact public.

Prohibiting  
publication

(4) The Review Council may order that information or documents relating to its investigation not be published or disclosed except as required by law.

Powers

R.S.O. 1980,  
c. 411

(5) The Review Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Notice of  
disposition

(6) When the Review Council has dealt with a complaint regarding a justice of the peace, it shall inform,

(a) the person who made the complaint; and

(b) the justice of the peace, if the complaint was brought to his or her attention,

of its disposition of the complaint.

Report and  
recommen-  
dations

(7) The Review Council may report its opinion regarding the complaint to the Attorney General and may recommend,

(a) that an inquiry be held under section 12;

(b) that the justice of the peace be compensated for all or part of his or her costs in connection with the investigation.

Copy to  
justice

(8) A copy of the report shall be given to the justice of the peace.

Right to be  
heard

(9) The Review Council shall not make a report unless the justice of the peace was notified of the investigation and given an opportunity to be heard and to produce evidence.

Publication  
of report

(10) The Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so.

(2) Le Conseil d'évaluation peut, s'il le juge opportun, transmettre des plaintes au coordonnateur.

Plaintes transmises au coordonnateur

(3) Les enquêtes sont tenues à huis clos, mais le Conseil d'évaluation peut aviser le procureur général qu'il a entrepris une enquête. Le procureur général peut informer le public de ce fait.

Huis clos

(4) Le Conseil d'évaluation peut ordonner que des renseignements ou des documents qui portent sur l'enquête ne soient ni publiés ni divulgués, sauf dans la mesure exigée par la loi.

Publication interdite

(5) Le Conseil d'évaluation possède les pouvoirs d'une commission aux termes de la partie II de la *Loi sur les enquêtes publiques*. Cette partie s'applique à l'enquête du Conseil comme si elle était tenue en vertu de cette loi.

Pouvoirs  
L.R.O. 1980,  
chap. 411

(6) Lorsque le Conseil d'évaluation a traité d'une plainte relative à un juge de paix, il avise de la décision prise à l'égard de la plainte :

Avis de la décision

- a) la personne qui a porté plainte;
- b) le juge de paix, si la plainte a été portée à son attention.

(7) Le Conseil d'évaluation peut faire rapport au procureur général de son opinion à l'égard de la plainte et recommander :

Rapport et recommandations

- a) qu'une enquête soit tenue aux termes de l'article 12;
- b) que le juge de paix soit indemnisé, en tout ou en partie, des dépens que lui a occasionnés l'enquête.

(8) Une copie du rapport est remise au juge de paix.

Copie au juge de paix

(9) Le Conseil d'évaluation ne fait pas de rapport s'il n'a pas avisé le juge de paix de la tenue de l'enquête et ne lui a pas fourni l'occasion de se faire entendre et de présenter des preuves.

Droit de se faire entendre

(10) Le procureur général peut publier le rapport, en tout ou en partie, s'il le juge dans l'intérêt public.

Publication du rapport

- Transition  
R.S.O. 1980,  
c. 227 (11) An investigation commenced under section 8 of the *Justices of the Peace Act* but not completed before this Act comes into force shall be continued in accordance with this Act by the Review Council as constituted under that section.
- Inquiry **12.**—(1) The Lieutenant Governor in Council may appoint a provincial judge to inquire into the question of whether a justice of the peace should be removed from office.
- Powers  
R.S.O. 1980,  
c. 411 (2) The *Public Inquiries Act* applies to the inquiry.
- Report (3) The report of the inquiry may recommend,
- (a) that the justice of the peace be removed from office;
  - (b) that the justice of the peace be compensated for all or part of his or her costs in connection with the inquiry.
- Tabling of  
report (4) The report shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.
- Co-ordinator  
appointed **13.**—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, shall appoint a provincial judge as Co-ordinator of Justices of the Peace.
- Co-ordinator  
to supervise  
justices,  
assign duties (2) The Co-ordinator has general supervision and direction over sittings of justices of the peace and the assignment of their duties, subject to the direction of the Chief Judge of the Provincial Court (Criminal Division) or, in matters relating to the jurisdiction of the Provincial Court (Family Division), the Chief Judge of that court.
- Idem (3) The Co-ordinator's authority to assign duties includes authority to direct the times and places that justices of the peace shall perform their duties.
- Part-time  
justices to  
follow duty  
roster (4) A part-time justice of the peace shall not act as a justice of the peace except in accordance with a duty roster established by the Co-ordinator.
- Duty rosters  
public (5) The duty rosters shall be made available to the public.



(11) L'enquête commencée en vertu de l'article 8 de la *Loi sur les juges de paix* et qui n'a pas été terminée avant l'entrée en vigueur de la présente loi est continuée, conformément à la présente loi, par le Conseil d'évaluation tel qu'il est constitué aux termes de cet article.

Disposition  
transitoire  
L.R.O. 1980,  
chap. 227

**12** (1) Le lieutenant-gouverneur en conseil peut charger un juge d'une cour provinciale de faire enquête afin de déterminer si un juge de paix devrait être destitué.

Enquête

(2) La *Loi sur les enquêtes publiques* s'applique à l'enquête.

Pouvoirs  
L.R.O. 1980,  
chap. 411

(3) Le rapport de l'enquête peut recommander :

Rapport

a) que le juge de paix soit destitué de ses fonctions;

b) que le juge soit indemnisé, en tout ou en partie, des dépens que lui a occasionnés l'enquête.

(4) Le rapport est déposé devant l'Assemblée législative si elle siège, sinon, dans les quinze jours qui suivent le début de la session suivante.

Dépôt du  
rapport

**13** (1) Le lieutenant-gouverneur en conseil, sur la recommandation du procureur général, nomme un juge d'une cour provinciale en tant que coordonnateur des juges de paix.

Nomination  
du coordon-  
nateur

(2) Le coordonnateur est chargé de l'administration et de la surveillance des sessions des juges de paix et de l'assignation de leurs fonctions. Ceci, sous réserve de la direction du juge en chef de la Cour provinciale (Division criminelle) ou, en ce qui concerne la compétence de la Cour provinciale (Division de la famille), du juge en chef de ce tribunal.

Surveillance,  
etc., par le  
coordonnateur

(3) Le pouvoir du coordonnateur en ce qui concerne l'assignation des fonctions des juges de paix comprend le pouvoir de fixer la date, l'heure et le lieu où ces fonctions seront exercées.

Idem

(4) Le juge de paix à temps partiel n'exerce les fonctions d'un juge de paix qu'en conformité avec un tableau de service établi par le coordonnateur.

Tableau de  
service

(5) Les tableaux de service sont mis à la disposition des membres du public.

Tableaux de  
service acces-  
sibles au  
public

Reports on  
duties  
performed

(6) Part-time justices of the peace shall submit to the Co-ordinator, when required by the Co-ordinator, reports containing the prescribed information on the duties they have performed.

Assistance to  
Co-ordinator

(7) Provincial judges shall assist the Co-ordinator in the supervision of justices and assignment of their duties and in the exercise of the Co-ordinator's other functions under this section, if the Co-ordinator or a chief judge so requests, and for the purpose they have the Co-ordinator's authority.

Assignment  
of duties to  
presiding  
justice

**14.**—(1) The following duties shall not be assigned to a presiding justice of the peace:

- (a) presiding at the trial of an offence under the *Criminal Code* (Canada);
- (b) presiding at the trial of an offence under any other Act of the Parliament of Canada, unless the offence is prescribed as an offence to the trial of which a presiding justice of the peace may be assigned;
- (c) holding a preliminary inquiry under Part XV of the *Criminal Code* (Canada);
- (d) exercising jurisdiction under the *Criminal Code* (Canada) in respect of an accused if the question of the accused's capability to conduct a defence or fitness to stand trial is raised;
- (e) exercising jurisdiction under section 68 (reading proclamation at riot) or section 471 (remand where offence committed in another jurisdiction) of the *Criminal Code* (Canada).

Exception

(2) Subsection (1) does not apply to adjournments.

Assignment  
of duties to  
non-presiding  
justice

**15.** The following duties shall not be assigned to a non-presiding justice of the peace:

- (a) the duties described in section 14;
- (b) presiding at the trial of an offence that is prescribed as one to the trial of which a presiding justice of the peace may be assigned;

(6) Les juges de paix à temps partiel soumettent au coordonnateur, à sa demande, des rapports qui comprennent les renseignements prescrits au sujet des fonctions qu'ils ont remplies.

Rapport

(7) Les juges des cours provinciales prêtent leur aide au coordonnateur, en ce qui concerne la surveillance des juges de paix et l'assignation de leurs fonctions, et dans l'exercice des autres compétences du coordonnateur visées au présent article, à la demande du coordonnateur ou d'un juge en chef. À cette fin, ils disposent des mêmes pouvoirs que le coordonnateur.

Aide au coordonnateur

**14** (1) Les fonctions suivantes ne sont pas assignées au juge de paix-président :

Assignation des fonctions au juge de paix-président

- a) présider le procès relatif à une infraction visée au *Code criminel* (Canada);
- b) présider le procès relatif à une infraction visée à une autre loi du Parlement du Canada, à moins que l'infraction n'ait été prescrite comme étant une infraction dont un juge de paix-président peut être affecté à présider le procès qui y est relatif;
- c) tenir une enquête préliminaire aux termes de la partie XV du *Code criminel* (Canada);
- d) exercer une compétence visée au *Code criminel* (Canada) à l'égard d'un accusé, si la question de son aptitude de conduire sa défense ou de sa capacité de subir son procès est soulevée;
- e) exercer les compétences visées à l'article 68 du *Code criminel* (Canada) (proclamation lors d'une émeute) et à l'article 471 de cette loi (renvoi lorsque l'infraction a été commise dans une autre juridiction).

S.R.C. 1970,  
chap. C-34

(2) Le paragraphe (1) ne s'applique pas aux ajournements.

Exception

**15** Les fonctions suivantes ne sont pas assignées au juge de paix non-président :

Assignation des fonctions au juge de paix non-président

- a) les fonctions décrites à l'article 14;
- b) présider le procès relatif à une infraction qui est prescrite comme étant une infraction dont un juge de paix-président peut être affecté à présider le procès qui y est relatif;

- (c) presiding at the trial of an offence under an Act of the Legislature or under a regulation or by-law made under the authority of such an Act;
- R.S.O. 1980,  
c. 400

(d) exercising jurisdiction under section 9 or 19 of the *Provincial Offences Act* (default conviction);
- (e) presiding at a hearing to determine whether a person should be released from or detained in custody;
- (f) exercising authority to issue a warrant to levy a tax, toll or dues under,

  - R.S.C. 1970,  
c. P-38

(i) section 32 of the *Public Works Act* (Canada),
  - R.S.O. 1980,  
c. 229

(ii) section 66 of the *Lakes and Rivers Improvement Act*, or
  - R.S.O. 1980,  
c. 302

(iii) subsection 387 (6) of the *Municipal Act*;
- (g) determining whether a thing should be forfeited or held under,

  - R.S.C. 1970,  
c. M-12

(i) section 7 of the *Migratory Birds Convention Act* (Canada), or
  - R.S.C. 1970,  
c. N-13

(ii) subsection 8 (3) of the *National Parks Act* (Canada);
- R.S.O. 1980,  
c. 262

(h) determining whether an order should be issued under section 10 of the *Mental Health Act* (examination by physician);
- (i) presiding at a hearing to determine a dispute under,

  - R.S.C. 1970,  
c. S-9

(i) section 207 of the *Canada Shipping Act*,
  - R.S.C. 1970,  
c. F-14

(ii) section 11 of the *Fisheries Act* (Canada),
  - R.S.O. 1980,  
c. 257

(iii) section 4 of the *Master and Servant Act*, or
  - R.S.O. 1980,  
c. 372

(iv) section 25, 26 or 27 of the *Pawnbrokers Act*;

- c) présider le procès relatif à une infraction visée à une loi de la Législature, ou à un règlement pris en application d'une telle loi;
- d) exercer une compétence en vertu de l'article 9 ou 19 de la *Loi sur les infractions provinciales* (reconnaissance de culpabilité en l'absence du défendeur); L.R.O. 1980, chap. 400
- e) présider une audience pour décider si une personne devrait être détenue sous garde ou libérée;
- f) exercer le pouvoir de décerner des mandats afin de percevoir des impôts, des droits ou des péages en vertu des dispositions suivantes :
  - (i) l'article 32 de la *Loi sur les travaux publics* (Canada), S.R.C. 1970, chap. P-38
  - (ii) l'article 66 de la *Loi sur l'aménagement des lacs et des rivières*, L.R.O. 1980, chap. 229
  - (iii) le paragraphe 387 (6) de la *Loi sur les municipalités*; L.R.O. 1980, chap. 302
- g) décider si des choses doivent être confisquées ou détenues en vertu des dispositions suivantes :
  - (i) l'article 7 de la *Loi sur la Convention concernant les oiseaux migrateurs* (Canada), S.R.C. 1970, chap. M-12
  - (ii) le paragraphe 8 (3) de la *Loi sur les parcs nationaux* (Canada); S.R.C. 1970, chap. N-13
- h) décider si une ordonnance doit être rendue en vertu de l'article 10 de la *Loi sur la santé mentale* (examen par un médecin); L.R.O. 1980, chap. 262
- i) présider des audiences en vue de régler des différends en vertu des dispositions suivantes :
  - (i) l'article 207 de la *Loi sur la marine marchande du Canada*, S.R.C. 1970, chap. S-9
  - (ii) l'article 11 de la *Loi sur les pêcheries* (Canada), S.R.C. 1970, chap. F-14
  - (iii) l'article 4 de la *Loi sur le louage de services*, L.R.O. 1980, chap. 257
  - (iv) les articles 25, 26 et 27 de la *Loi sur le prêt sur gage*; L.R.O. 1980, chap. 372



- (j) a duty that is prescribed as one that shall not be assigned to a non-presiding justice.

Jurisdiction  
of justices

**16.**—(1) Justices of the peace have jurisdiction throughout Ontario.

Idem

(2) Subject to sections 14 and 15, justices of the peace shall exercise the powers and perform the duties conferred or imposed on a justice of the peace by or under an Act of the Legislature or of the Parliament of Canada.

Justices to  
assist public

(3) Justices of the peace shall assist members of the public, at their request, in formulating informations in respect of offences.

Justices to  
perform  
duties

(4) Justices of the peace shall perform the duties assigned to them under this Act.

Salary of  
part-time  
justices

**17.** The salary, if any, to which each part-time justice of the peace is entitled shall be based on the Co-ordinator's determination of the justice's workload and calculated in accordance with the regulations.

Directions

**18.**—(1) The Co-ordinator may issue directions to justices of the peace on questions of law and procedure.

Directions  
binding on  
justices

(2) Justices of the peace shall follow a direction issued under subsection (1) unless it has been disapproved by a court on an appeal or a review.

Directions to  
be published

(3) The Co-ordinator shall cause the directions to be published in *The Ontario Gazette*.

Immunity  
from liability

**19.** A justice of the peace has the same immunity from liability as a judge of the Supreme Court.

Regulations

**20.**—(1) The Lieutenant Governor in Council may make regulations,

R.S.C. 1970,  
c. C-34

- (a) prescribing offences under Acts of Parliament other than the *Criminal Code* (Canada) in respect of which a presiding justice of the peace may be assigned to preside at a trial;
- (b) prescribing the information to be included in reports under subsection 13 (6);

- j) exercer les fonctions qui ont été prescrites comme étant des fonctions qui ne sont pas assignées au juge de paix non-président.

**16** (1) Les juges de paix ont compétence dans tout l'Ontario.

Compétence des juges de paix

(2) Sous réserve des articles 14 et 15, les juges de paix exercent les pouvoirs et remplissent les fonctions que leur confère une loi de la Législature ou du Parlement du Canada ou qui leur sont conférées en vertu d'une telle loi.

Idem

(3) Les juges de paix prêtent leur aide aux membres du public, lorsque ces derniers le demandent, en ce qui concerne la formulation des dénonciations.

Aide au public

(4) Les juges de paix remplissent les fonctions qui leur sont assignées en vertu de la présente loi.

Les juges de paix remplissent leurs fonctions

**17** Les traitements, le cas échéant, auxquels ont droit les juges de paix à temps partiel correspondent à l'évaluation de leurs charges de travail que fait le coordonnateur. Les traitements sont calculés conformément aux règlements.

Traitements des juges de paix à temps partiel

**18** (1) Le coordonnateur peut donner aux juges de paix des directives portant sur des questions de droit et de procédure.

Directives

(2) Les juges de paix suivent la directive donnée aux termes du paragraphe (1), à moins qu'elle n'ait été désapprouvée par le tribunal lors d'un appel ou d'une révision.

Effet sur les juges de paix

(3) Le coordonnateur fait publier les directives dans la *Gazette de l'Ontario*.

Publication des directives

**19** Le juge de paix jouit de la même immunité qu'un juge de la Cour suprême en ce qui concerne la responsabilité personnelle.

Immunité

**20** (1) Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) prescrire des infractions visées aux lois du Parlement du Canada, à l'exclusion du *Code criminel* (Canada), dont un juge de paix-président peut être affecté au procès qui y est relatif;
- b) prescrire les renseignements qui doivent figurer dans les rapports visés au paragraphe 13 (6);

S.R.C. 1970, chap. C-34

- (c) prescribing the salaries of full-time justices of the peace and prescribing the manner in which the salaries of part-time justices of the peace shall be calculated, including the factors to be taken into account and the method of calculation to be used;
- (d) providing for the benefits to which full-time and part-time justices of the peace are entitled;
- (e) providing for the payment of additional compensation to full-time and part-time justices of the peace for special assignments;
- (f) prescribing duties that shall not be assigned to a non-presiding justice of the peace.

**Classes**

(2) A regulation made under clause (1) (c) or (d) may prescribe classes of full-time and part-time justices of the peace for the purpose of salaries and benefits.

**Justices of the peace who are public servants**

(3) A regulation made under clause (1) (c) or (d) may provide that the duties performed, in the course of their public service employment, by justices of the peace who are also employed in the public service of Ontario shall not be considered in calculating their salary and benefits under this Act.

**Contributions**

(4) A regulation made under clause (1) (d) may require justices of the peace to contribute from their salaries part of the cost of a benefit and may fix the amount of the contributions.

**Benefits**

(5) A regulation made under clause (1) (d) may provide that justices of the peace whose salaries are less than prescribed amounts are not entitled to prescribed benefits.

**Territorial limitations**

(6) A regulation made under clause (1) (e) may be limited territorially.

**21.—(1) Section 2 of the *Commissioners for taking Affidavits Act*, being chapter 75 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:**

- c) prescrire les traitements des juges de paix à temps plein et prescrire les modalités selon lesquelles sont calculés les traitements des juges de paix à temps partiel, y compris les facteurs dont il est tenu compte et la méthode de calcul utilisée;
- d) prévoir les avantages sociaux auxquels ont droit les juges de paix à temps plein et à temps partiel;
- e) prévoir le versement d'une rémunération additionnelle aux juges de paix à temps plein et à temps partiel en ce qui concerne les affectations particulières;
- f) prescrire les fonctions qui ne sont pas assignées au juge de paix non-président.

(2) Un règlement pris en application de l'alinéa (1) c) ou d) peut prescrire des catégories de juges de paix à temps plein et à temps partiel aux fins de leurs traitements et avantages sociaux. Catégories

(3) Un règlement pris en application de l'alinéa (1) c) ou d) peut prévoir qu'il n'est pas tenu compte, en ce qui concerne le calcul de leurs traitements et avantages sociaux en vertu de la présente loi, des fonctions qu'accomplissent dans le cadre de leur travail au sein de la fonction publique des juges de paix qui font également partie de la fonction publique. Juges de paix  
qui sont  
fonctionnaires

(4) Un règlement pris en application de l'alinéa (1) d) peut exiger que soient prélevées sur les traitements des juges de paix des cotisations qui couvrent une partie du coût d'un avantage social. Ce règlement peut également fixer le montant des cotisations. Cotisations

(5) Un règlement pris en application de l'alinéa (1) d) peut prévoir que les juges de paix dont les traitements sont inférieurs à des montants prescrits n'ont pas droit à des avantages sociaux prescrits. Avantages  
sociaux

(6) Un règlement pris en application de l'alinéa (1) e) peut être assujéti à des limitations territoriales. Limitations  
territoriales

**21 (1) L'article 2 de la Loi sur les commissaires aux affidavits, qui constitue le chapitre 75 des Lois refondues de l'Ontario de 1980, est modifié par adjonction du paragraphe suivant :**

Provincial  
judges,  
justices of  
the peace

(1a) Every provincial judge and every justice of the peace is *ex officio* a commissioner for taking affidavits in Ontario.

(2) Section 13 of the said Act is amended by striking out “notary public or justice of the peace” in the third line and inserting in lieu thereof “or notary public”.

**22.** Subsection 61 (3) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed.

**23.** Paragraph 1 of subsection 5 (1) of the *Election Act, 1984*, being chapter 54, is amended by adding at the end thereof “or justices of the peace”.

**24.** The *Justices of the Peace Act*, being chapter 227 of the Revised Statutes of Ontario, 1980, the *Justices of the Peace Amendment Act, 1984*, being chapter 8 and section 22 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

**25.** Clause 8 (2) (c) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is amended by striking out “justice of the peace” in the first line.

**26.** Subsection 13 (1) of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

**27.—**(1) Sections 1, 2, 3 and 5 and subsection 6 (1) of the *Public Authorities Protection Act*, being chapter 406 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out “against the justice of the peace who made the conviction or” in the second and third lines.

Commence-  
ment

**28.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**29.** The short title of this Act is the *Justices of the Peace Act, 1988*.



(1a) Every provincial judge and every justice of the peace is *ex officio* a commissioner for taking affidavits in Ontario.\*

Provincial  
judges,  
justices of  
the peace

(2) L'article 13 de cette loi est modifié par substitution, à «notary public or justice of the peace» à la troisième ligne, de «or notary public».

**22** Le paragraphe 61 (3) de la *Loi de 1984 sur les tribunaux judiciaires*, qui constitue le chapitre 11, est abrogé.

**23** La disposition 1 du paragraphe 5 (1) de la *Loi électorale de 1984*, qui constitue le chapitre 54, est modifiée par adjonction de «or justices of the peace».

**24** La *Loi sur les juges de paix*, qui constitue le chapitre 227 des Lois refondues de l'Ontario de 1980, la *Loi de 1984 modifiant la Loi sur les juges de paix*, qui constitue le chapitre 8, et l'article 22 de la *Loi de 1986 modifiant des lois concernant les droits à l'égalité*, qui constitue le chapitre 64, sont abrogés.

**25** L'alinéa 8 (2) c) de la *Loi sur l'Assemblée législative*, qui constitue le chapitre 235 des Lois refondues de l'Ontario de 1980, est modifié par suppression des mots «justice of the peace» à la première ligne.

**26** Le paragraphe 13 (1) de la *Loi sur les mines*, qui constitue le chapitre 268 des Lois refondues de l'Ontario de 1980, est abrogé.

**27** (1) Les articles 1, 2, 3 et 5 et le paragraphe 6 (1) de la *Loi sur l'immunité des personnes publiques*, qui constitue le chapitre 406 des Lois refondues de l'Ontario de 1980, sont abrogés.

(2) Le paragraphe 7 (1) de cette loi est modifié par suppression des mots «against the justice of the peace who made the conviction or» aux deuxième et troisième lignes.

**28** La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en  
vigueur

**29** Le titre abrégé de la présente loi est *Loi de 1988 sur les juges de paix*.

Titre abrégé

\*Les lois modifiées n'ayant été promulguées qu'en anglais, il n'existe pas de texte français exigeant une modification législative.

Because the amended statutes were enacted only in English, there is no French text to amend.







1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1988

# Bill 94

## **An Act to prohibit Discrimination by Municipalities against Unrelated Persons Occupying Residential Property**

Mr. Jackson



---

*1st Reading*      January 7th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

---



#### EXPLANATORY NOTE

The purpose of the Bill is to ensure that related and unrelated persons who occupy residential property will be treated equally under municipal zoning by-laws.

Bill 94

1988

**An Act to prohibit Discrimination by  
Municipalities against Unrelated Persons  
Occupying Residential Property**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Planning Act, 1983*, being chapter 1, is amended by adding thereto the following section:

**34a.** The authority to pass by-laws provided in subsections 34 (1) and 37 (1) does not include and shall be deemed never to have included the authority to pass by-laws that distinguish between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure.

No authority  
to distinguish  
on basis of  
relationship

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** The short title of this Act is the *Planning Amendment Act, 1988*.

Short title





# Bill 95

## An Act to amend the Children's Law Reform Act

Mr. Henderson

*1st Reading*      February 8th, 1988

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTES

The purpose of the Bill is to create a legal presumption that custody of a child should be granted jointly to both the child's parents, when both parents are seeking custody. The presumption is rebutted if the court determines that joint custody is not in the best interests of the child.

The criteria by which a court determines the best interests of the child are altered in some respects. Among the new criteria, the court is directed to consider the extent to which each of the parents is prepared to co-operate with the other and to involve the other in the child's life when granting sole custody.

A parenting agreement to guide the parents in their decision-making about the child shall be made by the parents, with the aid of a mediator if they wish. Where the parents are unable to reach agreement, a court-ordered parenting agreement will apply. Among other things, a parenting agreement may provide for the appointment of a mediator, including a court-appointed mediator, to resolve parents' differences of opinion concerning what is in the best interests of the child, or concerning the interpretation of the agreement itself.

Where a parent does not act in accordance with the requirements of the parenting agreement, the court may rescind the order for joint custody and may grant sole custody to the other parent.

Where there is a custody order that was made before the Bill comes into force, a parent may apply after a specified period of time to a court for a review of the order under these new criteria.



# Bill 95

1988

## An Act to amend the Children's Law Reform Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(1a) In any proceeding in which,

Presumption  
in favour of  
joint custody

- (a) both parents of a child apply for joint custody of the child;
- (b) one parent applies for joint custody and the other parent applies for sole custody of the child; or
- (c) each parent applies for sole custody of the child,

it is presumed, in the absence of evidence to the contrary, that joint custody of the child by both parents is in the best interests of the child.

**(2)** The said section 20 is further amended by adding thereto the following subsection:

(2a) Where the parents of a child are granted joint custody of the child, each parent shall have equal rights and responsibilities with respect to the physical, mental, moral and emotional well-being of the child, including the making of decisions about the child's education, health care and religious training and, where practicable, the child shall reside with each parent for an equal period of time.

Idem, where  
joint custody

**(3)** The said section 20 is further amended by adding thereto the following subsection:

(3a) Despite subsection (3), where the parents of a child are granted joint custody of the child, each parent shall exer-

Idem, where  
joint custody

cise the rights and accept the responsibilities of a parent on behalf of them in respect of the child in accordance with the terms of the parenting agreement that is made by the court under subsection 29 (2) or filed with the court under subsection 29a (3).

**2. Subsection 24 (2) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:**

Best interests  
of child

(2) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, a court shall consider all the needs and circumstances of the child including,

- (a) the love, affection and emotional ties between the child and,
  - (i) each person entitled to or claiming custody of or access to the child,
  - (ii) the child's siblings, and
  - (iii) any half-siblings or step-siblings of the child with whom the child has been customarily living;
- (b) the views and preferences of the child, where such views and preferences can reasonably be ascertained;
- (c) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
- (d) the empathic ability and the fitness to act as a parent exhibited by each person applying for custody of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the stability of each environment in which it is proposed that the child will live; and
- (g) the relationship by blood or through an adoption order between the child and each person who is a party to the application.

(2a) In a proceeding in which both parents of a child apply for custody, the preference of one or both parents to assume sole custody of the child is not relevant to the determination of the best interests of the child.

Attitude toward joint custody not relevant

(2b) In a proceeding in which both parents of a child apply for custody, and the court determines that joint custody is not in the best interests of the child, in granting sole custody of the child, the court shall consider which parent has, among other factors, shown a greater willingness to facilitate access to the child by the other parent and to cooperate with and involve the other parent in the physical, mental and emotional well-being of the child.

Co-operative attitude shall be considered

**3. Section 28 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:**

(2) In a proceeding in which both parents of a child apply for custody and the court does not grant joint custody to the parents, the court shall state in its reasons for judgment the findings of fact upon which it has determined that the presumption is rebutted.

Reasons for judgment where presumption of joint custody rebutted

**4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:**

**29.—**(1) A court having jurisdiction under this Part may make an order that varies an order made by any court in respect of custody or access.

Order varying an order

(2) An application to vary an order in respect of custody or access shall not be made within eighteen months of the order.

Time

(3) Despite subsection (2), an application to vary an order in respect of custody or access may be made within eighteen months after the order where there has been a material change in circumstances that affects or is likely to affect the best interests of the child.

Idem, where material change

PARENTING AGREEMENTS

**29a.—**(1) Parents who are granted joint custody of a child by the court shall enter into a parenting agreement respecting their exercise of the joint custody, the terms of which may be determined with the assistance of a court-appointed mediator.

Parenting agreement

Mandatory  
terms

(2) A parenting agreement under subsection (1) shall include terms respecting,

- (a) the period or periods that the child shall reside with each parent;
- (b) the method by which the parents are to reach agreement concerning major decisions about the child's physical, mental, moral and emotional well-being;
- (c) the method of resolving a disagreement between the parents concerning the child's best interests or the interpretation of the agreement; and
- (d) the periodic review and renegotiation of the terms of the agreement by the parents.

Parenting  
agreement to  
be filed with  
the court

(3) Both parties to a parenting agreement under subsection (1) shall file the agreement with the clerk of the court that made the custody order within ninety days of the making of the custody order, together with the parties' affidavit stating that the agreement is in effect and has not been set aside or varied by a court or subsequent agreement.

Court-  
ordered  
parenting  
agreement

**29b.**—(1) Where a court grants joint custody of a child to the child's parents, and the parents do not file a parenting agreement under section 29a within ninety days after the granting of custody, upon the application of one of the parents, the court shall by order establish a parenting agreement to which the parents are deemed to be parties that binds the parents in their exercise of joint custody.

Terms of the  
agreement

(2) A parenting agreement made by order of the court under subsection (1) shall include the terms described in subsection 29a (2).

**5. The said Act is amended by adding thereto the following section:**

Where a  
parenting  
agreement is  
breached

**38a.** Where a party to a parenting agreement breaches any material term of the agreement, a court may, upon the application of the other party and despite subsection 29 (2), make such order as the court considers appropriate in the circumstances, including making an order varying the custody order to grant sole custody of the child to the applicant.

Commence-  
ment

**6. This Act comes into force on the day it receives Royal Assent.**

**7.** The short title of this Act is the *Children's Law Reform* Short title  
*Amendment Act, 1988.*





# Bill 96

## An Act to amend the Highway Traffic Act

Mr. Wildman

*1st Reading*      February 10th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The Bill prohibits the use of spare tires that are not of the same type or size as the other tires on a vehicle.

Bill 96

1988

**An Act to amend the Highway Traffic Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 51 of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

(4) No vehicle shall be operated on any highway if its tires are installed in a combination of construction types or sizes on an axle, except where such types or sizes are equivalent by tire industry standards. Combination of types or sizes

(5) Subsection (4) applies in respect of all tires, including temporary use spare tires. Idem

**2.** This Act comes into force on the day it receives Royal Assent. Commence-ment

**3.** The short title of this Act is the *Highway Traffic Amendment Act, 1988*. Short title





# Bill 97

## An Act to amend the Human Rights Code, 1981

Mr. Reville



*1st Reading*      February 10th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The purpose of the Bill is to amend the *Human Rights Code, 1981* in light of a recent court decision in order to insure that the occupancy of residential accommodations cannot be restricted to exclude children in a parent and child relationship, even if the children are less than eighteen years of age.

**Bill 97**

**1988**

**An Act to amend the Human Rights Code, 1981**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 20 of the *Human Rights Code, 1981*, being chapter 53, as amended by the Statutes of Ontario, 1986, chapter 64, section 18, is further amended by adding thereto the following subsection:

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of family status is infringed where a person is denied the sharing of such occupancy with his or her child by reason only that the child is less than eighteen years.

Child under  
eighteen  
years

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** The short title of this Act is the *Human Rights Code Amendment Act, 1988*.

Short title



# Bill 98

## An Act to amend the Public Transportation and Highway Improvement Act

The Hon. E. Fulton  
*Minister of Transportation*



*1st Reading*      February 10th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



## EXPLANATORY NOTES

**SECTION 1.** The definition of “highway” is being expanded.

**SECTION 2.** Section 22 of the Act currently provides for the Minister to enter into agreements with municipalities in respect of transportation. The new subsection 22 (3) describes another class of agreement that may be entered into. The new subsection 22 (4) confirms the power of municipalities to enter into the classes of agreements described.

**SECTION 3.** An internal reference is being corrected.

**SECTION 4.** Section 31 of the Act prohibits the construction of private roads, etc., that provides access to the King's Highway except in accordance with a permit. The amendment enlarges on this prohibition to include changes as well.

**SECTION 5.** The phrase “guard rail” is changed to the more appropriate “guide rail”.

**SECTIONS 6 and 7.** Section 34 controls the uses that are permitted adjacent to the King's Highway. Section 38 serves the same purpose in respect of controlled access highways. The two sections had several provisions in respect of giving of notice to remove obstruction, time of service of notice, right of the Ministry to enter land, etc., in common. These provisions have been condensed into section 34 as one subsection each rather than repeated in both sections 34 and 38. This aspect is housekeeping.

In addition, the concept of portable signs is introduced into sections 34 and 38.

The terminology of “giving notice” is changed to “giving directions”. The latter is a more accurate term.

The consequences of not complying with a direction are set out more precisely.

**SECTION 8.** The section is rewritten to provide basically that a county council, as a whole, may sit as a county road system committee.

**SECTION 9.** Section 47 of the Act sets out that payment pertaining to a county road system shall be made on approval of the road committee as certified by the chairman. The provision as rewritten permits the council to approve the payment.

**SECTION 10.** The subsection being deleted deals with the transfer of small bridges to local municipalities.

**SECTION 11.** Subsection 63 (1) of the Act authorizes a county to regulate the activities set out in the clauses. Two new clauses are added. Subsection 63 (2) is rewritten so that the wording corresponds to the added clauses.

**SECTION 12.** Section 78 of the Act deals with the setting of rates for road purposes by the council of a township.

**SECTION 13.** Section 90 of the Act deals with the designation of development roads controlled by towns, villages in a territorial district or townships. The phrase “village in a territorial district” is replaced by “village”.

**Bill 98****1988****An Act to amend the Public Transportation and  
Highway Improvement Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 1 (e) of the *Public Transportation and Highway Improvement Act*, being chapter 421 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (e) “highway”, includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, trestle or any other structure incidental thereto, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

**2. Section 22 of the said Act is amended by adding thereto the following subsections:**

(3) The Minister may enter into an agreement with any municipality, including a district, metropolitan or regional municipality, with respect to any matter in relation to the acquisition, establishment, extension, improvement or construction of an intercity passenger facility to serve any one or more areas in Ontario and the Minister may direct payment out of moneys appropriated therefor by the Legislature to the municipality for such purposes.

Intercity  
passenger  
service

(4) Any municipality may enter into an agreement under this section.

Power to  
municipalities

**3. Subsection 24 (2) of the said Act is amended by striking out “section 30” in the sixth line and inserting in lieu thereof “section 33”.**

**4. Clause 31 (1) (b) of the said Act is repealed and the following substituted therefor:**

- (b) shall construct or change the use of any private road, entranceway, gate or other structure or facility as a means of access to the King's Highway, other than a controlled-access highway,

. . . . .

**5. Subsection 33 (3) of the said Act is amended by striking out "guard" in the third line and inserting in lieu thereof "guide".**

**6.—(1) Subsection 34 (1) of the said Act is repealed and the following substituted therefor:**

Definitions

- (1) In this section,

"centre point of an intersection" is the point where the centre line of the through part or parts of the King's Highway meets the centre line of or the centre line of the prolongation of any other highway that intersects or meets the King's Highway;

"portable sign" means a sign or advertising device that is not permanently attached to the ground, a building or a structure or that is designed to be moved from place to place.

**(2) Subsection 34 (2) of the said Act is amended by striking out "or" at the end of clause (c) and by adding thereto the following clauses:**

- (e) sell, offer for sale or display produce, goods or merchandise upon the King's Highway; or
- (f) construct or use any private road, entranceway, gate or other structure or facility as a means of access to the King's Highway.

**(3) Section 34 of the said Act is amended by adding thereto the following subsection:**

Direction to  
stop sales,  
etc.

(2a) The Minister may direct any person to stop selling, offering for sale or displaying any produce, goods or merchandise within 45 metres of any limit of the King's Highway or within 180 metres of the centre point of an intersection and every person to whom such direction is given shall forthwith comply with the direction.

**(4) Subsection 34 (5) of the said Act is repealed and the following substituted therefor:**

(5) The Minister may direct any owner of land,

Notice to  
remove, etc.

- (a) to remove therefrom or alter thereon any building, fence, gasoline pump, or other structure or any road, tree, shrub or hedge placed, erected or altered;
- (b) to remove therefrom or alter thereon any sign, notice or advertising device displayed; or
- (c) to close up any private road, entranceway, gate or other structure or facility constructed or used,

in contravention of subsection (2).

(5a) Clause (5) (b) does not apply to a portable sign.

Exception

(5b) Where a portable sign is displayed contrary to the provisions of subsection (2), the Minister may direct,

Direction to  
remove

- (a) the owner of the portable sign, if the Minister is able to ascertain who and where the owner is;
- (b) the person on whose behalf the portable sign is displayed, if clause (a) does not apply but the Minister is able to ascertain who and where that person is; or
- (c) the owner of the land on which the portable sign is displayed, if clauses (a) and (b) do not apply,

to remove the sign.

(5c) Where a sign in respect of which a direction is given under subsection (5b) is not removed within five days after the direction is given, the Minister may in writing authorize any person to enter upon the land involved and to do whatever is necessary to remove the sign.

Removal of  
sign

**(5) Subsection 34 (6) of the said Act is amended by striking out “notice” in the first line and inserting in lieu thereof “direction” and by striking out “subsection (5)” in the first line and inserting in lieu thereof “subsection (2a), (5), (5b), 38 (5) or 38 (5b)”.**

**(6) Subsection 34 (7) of the said Act is repealed and the following substituted therefor:**

Failure to  
comply with  
direction

(7) Where a direction given under subsection (5) or 38 (7) is not complied with within thirty days after its receipt, the Minister may in writing authorize any person to enter upon the land involved to do whatever is necessary to comply with the direction.

No liability  
for damages

(7a) An authorization under subsection (5c), (7), 38 (5c) or 38 (7) is authority to the person named therein to enter on the land described therein and to remove the sign as directed and neither the Minister nor that person is liable for any damages that may be caused in effecting the removal.

**(7) Subsection 34 (8) of the said Act is repealed and the following substituted therefor:**

Offence

(8) Every person who contravenes any of the provisions of subsection (2), (3), 38 (2) or 38 (3) or who fails to comply with a direction given under subsection (2a), (5), (5b), 38 (5) or 38 (5b) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500 for a first offence and not less than \$200 and not more than \$1,000 for any subsequent offence.

**(8) Subsection 34 (9) of the said Act is amended by striking out “notice” in the first line and inserting in lieu thereof “direction”.**

**7.—(1) Subsection 38 (1) of the said Act is repealed and the following substituted therefor:**

Definitions

(1) In this section,

“centre point of an intersection” is the point where the centre line of the through part or parts of a controlled-access highway meets the centre line of or the centre line of the prolongation of any other highway that intersects or meets the controlled-access highway;

“portable sign” means a sign or advertising device that is not permanently attached to the ground, a building or a structure or that is designed to be moved from place to place.

**(2) Subsection 38 (5) of the said Act is amended by striking out “give notice to the owner of any land requiring him” in the first and second lines and inserting in lieu thereof “direct any owner of land”.**

**(3) Section 38 of the said Act is amended by adding thereto the following subsections:**



(5a) Clause (5) (b) does not apply to a portable sign.

Exception

(5b) Where a portable sign is displayed contrary to the provisions of subsection (2), the Minister may direct,

Direction to remove

- (a) the owner of the portable sign, if the Minister is able to ascertain who and where the owner is;
- (b) the person on whose behalf the portable sign is displayed, if clause (a) does not apply but the Minister is able to ascertain who and where that person is; or
- (c) the owner of the land on which the portable sign is displayed, if clauses (a) and (b) do not apply,

to remove the sign.

(5c) Where a sign in respect of which a direction is given under subsection (5b) is not removed within five days after the direction is given, the Minister may in writing authorize any person to enter upon the land involved and to do whatever is necessary to remove the sign.

Removal of sign

**(4) Subsections 38 (6), (7) and (8) of the said Act are repealed.**

**(5) Subsection 38 (9) of the said Act is amended by striking out “notice” in the first line and inserting in lieu thereof “direction”.**

**8. Section 45 of the said Act is repealed and the following substituted therefor:**

**45.—(1) Where a county road system is established under this Part, the county council shall,**

County road system committee

- (a) act as a committee of the whole; or
- (b) appoint by by-law from three to ten residents of the county, who need not be members of the council, to constitute a committee,

to direct the work to be done on the county road system.

(2) If a committee is constituted under clause (1) (b), the council, subject to subsection (3), may by by-law,

Idem

- (a) regulate the term of office, reappointment, removal from office and the filling of any vacancy; and

- (b) assign executive powers considered appropriate for the effective operation of the committee.

Staggered  
terms

(3) A committee constituted under clause (1) (b) shall be set up so that,

- (a) other than a committee consisting of four members, not less than one-third of the members are appointed to hold office for a term of three years, not less than one-third of the members are appointed to hold office for a term of two years and the remaining members are appointed to hold office for a term of one year; or
- (b) for a committee consisting of four members, one member is appointed to hold office for a term of three years, one member is appointed to hold office for a term of two years and two members are appointed to hold office for a term of one year,

and thereafter all members shall be appointed for a term of three years.

Re-  
appointment

(4) Every member of the committee is eligible for reappointment upon the expiry of his or her term of office.

Warden  
member

(5) The warden of the county is *ex officio* a member of the committee and may sit and vote thereon.

**9. Section 47 of the said Act is repealed and the following substituted therefor:**

Payment,  
how to be  
made

**47.** No money shall be disbursed pertaining to the county road system except by the county treasurer on the certificate of the county road superintendent approved by the county council and certified in writing by the warden of the county or by the committee appointed to direct the work to be done on the county road system as certified in writing by the chairman thereof.

**10. Subsection 53 (3) of the said Act is repealed.**

**11.—(1) Subsection 63 (1) of the said Act is amended by striking out “and” at the end of clause (a) and by adding thereto the following clauses:**

- (c) the construction or alteration of any private road, entranceway, gate or other structure or facility that permits access to a road; and

- (d) any change in use of any private road, entranceway, gate or other structure or facility that permits access to a road.

**(2) Subsection 63 (2) of the said Act is repealed and the following substituted therefor:**

(2) A by-law passed under this section may provide for the issuing of a permit for any of the acts that may be regulated under this section and may prescribe the form, terms and conditions of the permit and the fees to be paid for it, and may prescribe penalties for contravention of the by-law. Permits

**12. Section 78 of the said Act is repealed.**

**13. Subsection 90 (1) of the said Act is amended by striking out “or village in a territorial district or of a” in the third line and inserting in lieu thereof “village or”.**

**14.—(1) This Act, except section 10, comes into force on the day it receives Royal Assent.** Commence-  
ment

**(2) Section 10 comes into force on a day to be named by proclamation of the Lieutenant Governor.** Idem

**15. The short title of this Act is the *Public Transportation and Highway Improvement Amendment Act, 1988.*** Short title









Bill 98

(Chapter 24  
Statutes of Ontario, 1988)

An Act to amend the Public Transportation and  
Highway Improvement Act

The Hon. E. Fulton  
Minister of Transportation

---

<i>1st Reading</i>	February 10th, 1988
<i>2nd Reading</i>	May 25th, 1988
<i>3rd Reading</i>	May 30th, 1988
<i>Royal Assent</i>	June 1st, 1988

---



**Bill 98**

**1988**

**An Act to amend the Public Transportation and  
Highway Improvement Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Clause 1 (e) of the *Public Transportation and Highway Improvement Act*, being chapter 421 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (e) “highway”, includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, trestle or any other structure incidental thereto, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

**2. Section 22 of the said Act is amended by adding thereto the following subsections:**

(3) The Minister may enter into an agreement with any municipality, including a district, metropolitan or regional municipality, with respect to any matter in relation to the acquisition, establishment, extension, improvement or construction of an intercity passenger facility to serve any one or more areas in Ontario and the Minister may direct payment out of moneys appropriated therefor by the Legislature to the municipality for such purposes.

Intercity  
passenger  
service

(4) Any municipality may enter into an agreement under this section.

Power to  
municipalities

**3. Subsection 24 (2) of the said Act is amended by striking out “section 30” in the sixth line and inserting in lieu thereof “section 33”.**

**4. Clause 31 (1) (b) of the said Act is repealed and the following substituted therefor:**

- (b) shall construct or change the use of any private road, entranceway, gate or other structure or facility as a means of access to the King's Highway, other than a controlled-access highway,

**5. Subsection 33 (3) of the said Act is amended by striking out "guard" in the third line and inserting in lieu thereof "guide".**

**6.—(1) Subsection 34 (1) of the said Act is repealed and the following substituted therefor:**

Definitions

- (1) In this section,

"centre point of an intersection" is the point where the centre line of the through part or parts of the King's Highway meets the centre line of or the centre line of the prolongation of any other highway that intersects or meets the King's Highway;

"portable sign" means a sign or advertising device that is not permanently attached to the ground, a building or a structure or that is designed to be moved from place to place.

**(2) Subsection 34 (2) of the said Act is amended by striking out "or" at the end of clause (c) and by adding thereto the following clauses:**

- (e) sell, offer for sale or display produce, goods or merchandise upon the King's Highway; or
- (f) construct or use any private road, entranceway, gate or other structure or facility as a means of access to the King's Highway.

**(3) Section 34 of the said Act is amended by adding thereto the following subsection:**

Direction to  
stop sales,  
etc.

(2a) The Minister may direct any person to stop selling, offering for sale or displaying any produce, goods or merchandise within 45 metres of any limit of the King's Highway or within 180 metres of the centre point of an intersection and every person to whom such direction is given shall forthwith comply with the direction.



**(4) Subsection 34 (5) of the said Act is repealed and the following substituted therefor:**

(5) The Minister may direct any owner of land,

Direction to  
remove, etc.

- (a) to remove therefrom or alter thereon any building, fence, gasoline pump or other structure or any road, tree, shrub or hedge placed, erected or altered;
- (b) to remove therefrom or alter thereon any sign, notice or advertising device displayed; or
- (c) to close up any private road, entranceway, gate or other structure or facility constructed or used,

in contravention of subsection (2).

(5a) Clause (5) (b) does not apply to a portable sign.

Exception

(5b) Where a portable sign is displayed contrary to subsection (2), the Minister may direct,

Direction to  
remove

- (a) the owner of the portable sign, if the Minister is able to ascertain who and where the owner is;
- (b) the person on whose behalf the portable sign is displayed, if clause (a) does not apply but the Minister is able to ascertain who and where that person is; or
- (c) the owner of the land on which the portable sign is displayed, if clauses (a) and (b) do not apply,

to remove the sign.

(5c) Where a sign in respect of which a direction is given under subsection (5b) is not removed within five days after the direction is given, the Minister may in writing authorize any person to enter upon the land involved and to do whatever is necessary to remove the sign.

Removal of  
sign

**(5) Subsection 34 (6) of the said Act is amended by striking out “notice” in the first line and inserting in lieu thereof “direction” and by striking out “subsection (5)” in the first line and inserting in lieu thereof “subsection (2a), (5), (5b), 38 (5) or 38 (5b)”.**

**(6) Subsection 34 (7) of the said Act is repealed and the following substituted therefor:**

Failure to  
comply with  
direction

(7) Where a direction given under subsection (5) or 38 (7) is not complied with within thirty days after its receipt, the Minister may in writing authorize any person to enter upon the land involved to do whatever is necessary to comply with the direction.

No liability  
for damages

(7a) An authorization under subsection (5c), (7), 38 (5c) or 38 (7) is authority to the person named therein to enter on the land described therein and to remove the sign as directed and neither the Minister nor that person is liable for any damages that may be caused in effecting the removal.

**(7) Subsection 34 (8) of the said Act is repealed and the following substituted therefor:**

Offence

(8) Every person who contravenes subsection (2), (3), 38 (2) or 38 (3) or who fails to comply with a direction given under subsection (2a), (5), (5b), 38 (5) or 38 (5b) is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$500 for a first offence and not less than \$200 and not more than \$1,000 for any subsequent offence.

**(8) Subsection 34 (9) of the said Act is amended by striking out “notice” in the first line and inserting in lieu thereof “direction”.**

**7.—(1) Subsection 38 (1) of the said Act is repealed and the following substituted therefor:**

Definitions

(1) In this section,

“centre point of an intersection” is the point where the centre line of the through part or parts of a controlled-access highway meets the centre line of or the centre line of the prolongation of any other highway that intersects or meets the controlled-access highway;

“portable sign” means a sign or advertising device that is not permanently attached to the ground, a building or a structure or that is designed to be moved from place to place.

**(2) Subsection 38 (5) of the said Act is amended by striking out “give notice to the owner of any land requiring him” in the first and second lines and inserting in lieu thereof “direct any owner of land”.**

**(3) Section 38 of the said Act is amended by adding thereto the following subsections:**

(5a) Clause (5) (b) does not apply to a portable sign. Exception

(5b) Where a portable sign is displayed contrary to the provisions of subsection (2), the Minister may direct, Direction to remove

- (a) the owner of the portable sign, if the Minister is able to ascertain who and where the owner is;
- (b) the person on whose behalf the portable sign is displayed, if clause (a) does not apply but the Minister is able to ascertain who and where that person is; or
- (c) the owner of the land on which the portable sign is displayed, if clauses (a) and (b) do not apply,

to remove the sign.

(5c) Where a sign in respect of which a direction is given under subsection (5b) is not removed within five days after the direction is given, the Minister may in writing authorize any person to enter upon the land involved and to do whatever is necessary to remove the sign. Removal of sign

**(4) Subsections 38 (6), (7) and (8) of the said Act are repealed.**

**(5) Subsection 38 (9) of the said Act is amended by striking out "notice" in the first line and inserting in lieu thereof "direction".**

**8. Section 45 of the said Act is repealed and the following substituted therefor:**

**45.—(1)** Where a county road system is established under this Part, the county council shall, County road system committee

- (a) act as a committee of the whole; or
- (b) appoint by by-law from three to ten residents of the county, who need not be members of the council, to constitute a committee,

to direct the work to be done on the county road system.

(2) If a committee is constituted under clause (1) (b), the council, subject to subsection (3), may by by-law, Idem

- (a) regulate the term of office, reappointment, removal from office and the filling of any vacancy; and

- (b) assign executive powers considered appropriate for the effective operation of the committee.

Staggered  
terms

(3) A committee constituted under clause (1) (b) shall be set up so that,

- (a) other than a committee consisting of four members, not less than one-third of the members are appointed to hold office for a term of three years, not less than one-third of the members are appointed to hold office for a term of two years and the remaining members are appointed to hold office for a term of one year; or
- (b) for a committee consisting of four members, one member is appointed to hold office for a term of three years, one member is appointed to hold office for a term of two years and two members are appointed to hold office for a term of one year,

and thereafter all members shall be appointed for a term of three years.

Re-  
appointment

(4) Every member of the committee is eligible for reappointment upon the expiry of his or her term of office.

Warden  
member

(5) The warden of the county is *ex officio* a member of the committee and may sit and vote thereon.

**9. Section 47 of the said Act is repealed and the following substituted therefor:**

Payment,  
how to be  
made

**47.** No money shall be disbursed pertaining to the county road system except by the county treasurer on the certificate of the county road superintendent approved by the county council and certified in writing by the warden of the county or by the committee appointed to direct the work to be done on the county road system as certified in writing by the chairman thereof.

**10. Subsection 53 (3) of the said Act is repealed.**

**11.—(1) Subsection 63 (1) of the said Act is amended by striking out “and” at the end of clause (a) and by adding thereto the following clauses:**

- (c) the construction or alteration of any private road, entranceway, gate or other structure or facility that permits access to a road; and

- (d) any change in use of any private road, entranceway, gate or other structure or facility that permits access to a road.

**(2) Subsection 63 (2) of the said Act is repealed and the following substituted therefor:**

(2) A by-law passed under this section may provide for the issuing of a permit for any of the acts that may be regulated under this section and may prescribe the form, terms and conditions of the permit and the fees to be paid for it, and may prescribe penalties for contravention of the by-law. Permits

**12. Section 78 of the said Act is repealed.**

**13. Subsection 90 (1) of the said Act is amended by striking out “or village in a territorial district or of a” in the third line and inserting in lieu thereof “village or”.**

**14.—(1) This Act, except section 10, comes into force on the day it receives Royal Assent.** Commence-  
ment

**(2) Section 10 comes into force on a day to be named by proclamation of the Lieutenant Governor.** Idem

**15. The short title of this Act is the *Public Transportation and Highway Improvement Amendment Act, 1988.*** Short title









# Bill 99

## An Act to amend Ministry of Transportation and Communications Act

The Hon. E. Fulton  
*Minister of Transportation*

*1st Reading*      February 10th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

### EXPLANATORY NOTES

The Bill continues the Ministry of Transportation and Communications under the name Ministry of Transportation.

Section 5 of the Bill protects individuals acting in good faith from personal liability in tort.



Bill 99

1988

**An Act to amend  
Ministry of Transportation and Communications Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The title of the *Ministry of Transportation and Communications Act*, being chapter 289 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Ministry of Transportation Act

**2.** Section 1 of the said Act is repealed and the following substituted therefor:

**1.** In this Act,

Definitions

“Minister” means the Minister of Transportation;

“Ministry” means the Ministry of Transportation.

**3.** Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

(1) The ministry of the public service known as the Ministry of Transportation and Communications is continued under the name of the Ministry of Transportation.

Ministry  
continued

**4.** Subsection 4 (1) of the said Act is amended by striking out “and Communications” in the fifth line and in the eighth line.

**5.** The said Act is further amended by adding thereto the following section:

**9.—**(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, any officer or employee of the Ministry, anyone acting under the authority

Immunity

of the Minister or the Deputy Minister, or anyone appointed under any Act assigned to the Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown  
liability

R.S.O. 1980,  
c. 393

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Reference in  
other Acts,  
etc.

R.S.O. 1980,  
c. 289

**6.** A reference in any Act, regulation, order in council, ministerial order, or act or thing made or done under any Act, to the Minister of Transportation and Communications, the Deputy Minister of Transportation and Communications, the Ministry of Transportation and Communications or the *Ministry of Transportation and Communications Act* shall be deemed to be a reference to the Minister of Transportation, the Deputy Minister of Transportation, the Ministry of Transportation or the *Ministry of Transportation Act*, respectively.

Commence-  
ment

**7.** This Act shall be deemed to have come into force on the 29th day of September, 1987.

Short title

**8.** The short title of this Act is the *Ministry of Transportation and Communications Amendment Act, 1988*.

# Bill 100

## An Act to amend the Education Act

The Hon. C. Ward  
*Minister of Education*



*1st Reading*      February 11th, 1988

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTES

Section 213 originally enacted in 1968 provided a method of apportionment of the sums required by a divisional board among the municipalities and localities in the school division. The section has not been used for that purpose since 1970. In addition, section 213 provided for an arbitration of the amounts to be apportioned to the municipalities and localities by the treasurers of the municipalities and, in the event of an objection to the award, for a referral of the matter to the Ontario Municipal Board for final decision.

Section 213 is repealed and the amended section 214 now provides for a review of an apportionment made in accordance with the regulations by the treasurers of the municipalities within the school division. The decision of the treasurers is final.

The nature of the review is set out in subsection 214 (2) (see subsection 2 (1) of the Bill) and the powers of the treasurers upon the review are set out in subsection 214 (6) (see subsection 2 (3) of the Bill).

A provision that entitles ratepayers in a locality to have representation at the review is also included in subsections 214 (13) and (14) (see subsection 2 (3) of the Bill).

**Bill 100**

**1988**

**An Act to amend the Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 213 of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, is repealed.**

**2.—(1) Subsection 214 (2) of the said Act is repealed and the following substituted therefor:**

(2) Where, in respect of any year, the council of a municipality is of the opinion that the apportionment made under a regulation made under subsection (1) is incorrect because of, Review

- (a) an error or omission in the determination of the amount of the assessment of one or more municipalities or localities in the school division;
- (b) an error or omission in the application of a factor used to equalize the assessment of one or more municipalities or localities in the school division;
- (c) an error or omission in a calculation; or
- (d) the failure to apply one or more provisions of the regulation,

the council may apply to the divisional board within thirty days after receiving the apportionment from the divisional board for a review to determine the correct proportion of the sums required for public school purposes and for secondary school purposes that each municipality or part thereof or locality shall bear in each year.

**(2) Subsection 214 (5) of the said Act is repealed and the following substituted therefor:**

(5) Upon receipt of the application referred to in subsection (2), the divisional board shall direct its chief executive Meeting



officer to call a meeting of the treasurer of the county or the regional municipality and the treasurers of the municipalities within the school division.

**(3) Subsection 214 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:**

Review by  
treasurers

(6) At the meeting, the treasurers shall review and, where appropriate, revise the proportion of the amounts to be raised by each municipality or part thereof or locality in accordance with the regulation.

Interpretation

(7) For the purposes of subsection (5), in the case of The Muskoka Board of Education, the treasurer of the county or regional municipality shall be the treasurer of The District Municipality of Muskoka.

Decision

(8) The treasurers shall make their decision in writing and shall file a copy of the decision with the chief executive officer of the divisional board.

Idem

(9) Upon receipt of the decision, the chief executive officer shall forthwith send a copy of the decision to the clerk of each municipality by registered mail.

Decision final

(10) The decision of the treasurers is final.

Effect of  
decision

(11) The decision of the treasurers is effective only in respect of the year for which the decision is made.

Apportion-  
ment where  
unorganized  
territory  
becomes part  
of school  
division

(12) Where, in any year, territory without municipal organization is included in a school division and property therein is assessed for the first time for the purpose of levying rates and collecting taxes for school purposes, such assessment shall, for the purposes of apportionment of costs for that year under this section, be the assessment on which taxes are levied in that year and an application for a review under subsection (2) may be made within thirty days after receiving the apportionment from the divisional board.

Territory  
without  
municipal  
organization

(13) In territory without municipal organization that is deemed to be a district municipality in a school division, five ratepayers resident in such district municipality have the same powers as the council of a municipality under subsection (2) and may appoint one ratepayer to act as treasurer for the purposes of this section.

(14) Where the ratepayers cannot agree as to who shall be the treasurer, the chief executive officer of the divisional board shall designate a person to act as treasurer.

Idem

(15) An application for a review under this section does not relieve the council of a municipality of its duty to levy and collect the amounts requisitioned by the board as apportioned to the municipality.

Levy  
notwith-  
standing  
review

(16) Where, in respect of any year, a municipality in a school division has, under section 215, levied the amounts that were requisitioned by the divisional board and the amounts are altered as a result of the decision of the treasurers, the provisions of subsections 219 (2) and (3) apply in respect of the alteration.

Adjustment  
where  
apportionment  
altered

(17) Subsections (2) to (16) do not apply to an area municipality in The Regional Municipality of Sudbury, The Regional Municipality of Haldimand-Norfolk or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

Non-appli-  
cationR.S.O. 1980,  
c. 302

**3.—**(1) Subsection 215 (3) of the said Act is amended by striking out “subsection 213 (1)” in the fourth and fifth lines and inserting in lieu thereof “the regulation made under subsection 214 (1)”.

(2) Clause 215 (4) (b) of the said Act is amended by striking out “subsection 213 (1)” in the fourth line and inserting in lieu thereof “the regulation made under subsection 214 (1)”.

**4.—**(1) Where an apportionment is made by a divisional board in the year 1988 prior to the date that this Act comes into force and a council of a municipality is of the opinion that the apportionment imposes an undue burden on the ratepayers of the municipality or part thereof, and the council applies to the divisional board for an arbitration to determine the proportion of the sums required for public school purposes and for secondary school purposes, the application shall be dealt with as an application for a review as if sections 1, 2 and 3 of this Act were in force.

Transition

(2) Subsection (1) applies to an application made by five ratepayers resident in a deemed district municipality in territory without municipal organization who have the same powers as a council of a municipality under subsection 214 (13) of the *Education Act* as re-enacted by subsection 2 (3) of this Act.

Idem

R.S.O. 1980,  
c. 129

Commence-  
ment

**5.** This Act comes into force on the day it receives Royal Assent.

Short title

**6.** The short title of this Act is the *Education Amendment Act, 1988*.









# Bill 100

(Chapter 46  
Statutes of Ontario, 1988)

## An Act to amend the Education Act

The Hon. C. Ward  
*Minister of Education*

---

<i>1st Reading</i>	February 11th, 1988
<i>2nd Reading</i>	June 1st, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

---



# Bill 100

1988

## An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 213 of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, is repealed.**

**2.—(1) Subsection 214 (2) of the said Act is repealed and the following substituted therefor:**

(2) Where, in respect of any year, the council of a municipality is of the opinion that the apportionment made under a regulation made under subsection (1) is incorrect because of, Review

- (a) an error or omission in the determination of the amount of the assessment of one or more municipalities or localities in the school division;
- (b) an error or omission in the application of a factor used to equalize the assessment of one or more municipalities or localities in the school division;
- (c) an error or omission in a calculation; or
- (d) the failure to apply one or more provisions of the regulation,

the council may apply to the divisional board within thirty days after receiving the apportionment from the divisional board for a review to determine the correct proportion of the sums required for public school purposes and for secondary school purposes that each municipality or part thereof or locality shall bear in each year.

**(2) Subsection 214 (5) of the said Act is repealed and the following substituted therefor:**

(5) Upon receipt of the application referred to in subsection (2), the divisional board shall direct its chief executive Meeting

officer to call a meeting of the treasurer of the county or the regional municipality and the treasurers of the municipalities within the school division.

**(3) Subsection 214 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:**

Review by  
treasurers

(6) At the meeting, the treasurers shall review and, where appropriate, revise the proportion of the amounts to be raised by each municipality or part thereof or locality in accordance with the regulation.

Interpretation

(7) For the purposes of subsection (5), in the case of The Muskoka Board of Education, the treasurer of the county or regional municipality shall be the treasurer of The District Municipality of Muskoka.

Decision

(8) The treasurers shall make their decision in writing and shall file a copy of the decision with the chief executive officer of the divisional board.

Idem

(9) Upon receipt of the decision, the chief executive officer shall forthwith send a copy of the decision to the clerk of each municipality by registered mail.

Decision final

(10) The decision of the treasurers is final.

Effect of  
decision

(11) The decision of the treasurers is effective only in respect of the year for which the decision is made.

Apportion-  
ment where  
unorganized  
territory  
becomes part  
of school  
division

(12) Where, in any year, territory without municipal organization is included in a school division and property therein is assessed for the first time for the purpose of levying rates and collecting taxes for school purposes, such assessment shall, for the purposes of apportionment of costs for that year under this section, be the assessment on which taxes are levied in that year and an application for a review under subsection (2) may be made within thirty days after receiving the apportionment from the divisional board.

Territory  
without  
municipal  
organization

(13) In territory without municipal organization that is deemed to be a district municipality in a school division, five ratepayers resident in such district municipality have the same powers as the council of a municipality under subsection (2) and may appoint one ratepayer to act as treasurer for the purposes of this section.

(14) Where the ratepayers cannot agree as to who shall be the treasurer, the chief executive officer of the divisional board shall designate a person to act as treasurer. Idem

(15) An application for a review under this section does not relieve the council of a municipality of its duty to levy and collect the amounts requisitioned by the board as apportioned to the municipality. Levy notwithstanding review

(16) Where, in respect of any year, a municipality in a school division has, under section 215, levied the amounts that were requisitioned by the divisional board and the amounts are altered as a result of the decision of the treasurers, the provisions of subsections 219 (2) and (3) apply in respect of the alteration. Adjustment where apportionment altered

(17) Subsections (2) to (16) do not apply to an area municipality in The Regional Municipality of Sudbury, The Regional Municipality of Haldimand-Norfolk or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application

R.S.O. 1980,  
c. 302

**3.—**(1) Subsection 215 (3) of the said Act is amended by striking out “subsection 213 (1)” in the fourth and fifth lines and inserting in lieu thereof “the regulation made under subsection 214 (1)”.

(2) Clause 215 (4) (b) of the said Act is amended by striking out “subsection 213 (1)” in the fourth line and inserting in lieu thereof “the regulation made under subsection 214 (1)”.

**4.—**(1) Where an apportionment is made by a divisional board in the year 1988 prior to the date that this Act comes into force and a council of a municipality is of the opinion that the apportionment imposes an undue burden on the ratepayers of the municipality or part thereof, and the council applies to the divisional board for an arbitration to determine the proportion of the sums required for public school purposes and for secondary school purposes, the application shall be dealt with as an application for a review as if sections 1, 2 and 3 of this Act were in force. Transition

(2) Subsection (1) applies to an application made by five ratepayers resident in a deemed district municipality in territory without municipal organization who have the same powers as a council of a municipality under subsection 214 (13) of the *Education Act* as re-enacted by subsection 2 (3) of this Act. Idem

R.S.O. 1980,  
c. 129



Commence-  
ment

**5.** This Act comes into force on the day it receives Royal Assent.

Short title

**6.** The short title of this Act is the *Education Amendment Act, 1988*.





# Bill 101

## **An Act to repeal the Ministry of Transportation and Communications Creditors Payment Act**

The Hon. E. Fulton  
*Minister of Transportation*



*1st Reading*      February 11th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The repeal of the Act is brought forward in conjunction with an amendment to the *Construction Lien Act, 1983* whereby it is considered that suppliers shall receive better protection.



**Bill 101****1988****An Act to repeal the Ministry of Transportation  
and Communications Creditors Payment Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Ministry of Transportation and Communications Creditors Payment Act*, being chapter 290 of the Revised Statutes of Ontario, 1980, is repealed.

**2.—(1)** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

(2) Notwithstanding section 1, the *Ministry of Transportation and Communications Creditors Payment Act* continues to apply in respect of labour, material or services supplied as a result of a contract, as defined in that Act, made before this Act comes into force. Continued  
application

**3.** The short title of this Act is the *Ministry of Transportation and Communications Creditors Payment Repeal Act, 1988*. Short title



# Bill 102

## An Act to amend the Construction Lien Act, 1983

The Hon. E. Fulton  
*Minister of Transportation*



---

*1st Reading*      February 11th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

---

## EXPLANATORY NOTE

Subsection 3 (1) of the Act is recast to remove the reference to the *Ministry of Transportation and Communications Creditors Payment Act*. The effect is that contracts that were covered by that Act will fall under the *Construction Lien Act, 1983*. A Bill repealing the *Ministry of Transportation and Communications Creditors Payment Act* is to be introduced in conjunction with this Bill.

Bill 102

1988

An Act to amend the Construction Lien Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 (1) of the *Construction Lien Act, 1983*, being chapter 6, is repealed and the following substituted therefor:

(1) Subject to section 16 (where lien does not attach to the premises), this Act binds the Crown.

Act binds Crown

2. The *Construction Lien Act, 1983* does not apply in respect of labour, material or services supplied as a result of a contract, as defined in the *Ministry of Transportation and Communications Creditors Payment Act*, being chapter 290 of the Revised Statutes of Ontario, 1980, made before this Act comes into force.

Limited application

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commencement

4. The short title of this Act is the *Construction Lien Amendment Act, 1988*.

Short title





# Bill 103

## An Act respecting Living Wills

Mr. Cureatz



*1st Reading*      February 11th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The purpose of the Bill is to protect from civil liability and disciplinary action doctors and other health-care personnel who withhold or cease life-sustaining procedures in accordance with a patient's wishes as set out in a living will.

Criteria are established to execute a valid living will in sections 2 and 3 and to revoke it in section 4.

**Bill 103****1988****An Act respecting Living Wills**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“declarant” is a person who executes a living will;

“life-sustaining procedure” means a medical procedure or treatment that is performed or applied for the purpose of postponing the moment of death, but does not include a medical procedure or treatment that is performed or applied for the purpose of alleviating pain;

“living will” is a written declaration refusing consent to the performance of a life-sustaining procedure on the declarant if and when the declarant has a terminal condition and is no longer mentally competent;

“mentally competent” means having the ability to understand the subject-matter in respect of which consent may be required and able to appreciate the consequences of giving or withholding consent;

“physician” means a legally qualified medical practitioner;

“terminal condition” means an incurable and irreversible condition such that death is imminent and may only be postponed by the performance of a life-sustaining procedure.

**2.** A person who has attained the age of majority and is mentally competent may execute a living will. Living will

**3.—(1)** A living will is valid for the purposes of this Act Validity of living will  
if,

(a) it is in writing;

(b) it is signed at its end by the declarant;

- (c) the declarant signs it or acknowledges his or her signature in the presence of two or more witnesses who are present at the same time;
- (d) two or more of the witnesses sign it in the presence of the declarant;
- (e) none of the witnesses are related to the declarant, are potential beneficiaries of the declarant's estate or are financially responsible for the declarant; and
- (f) it is dated on the day it is executed.

Duration (2) A living will that has not been revoked ceases to be valid on the day that is five years after its execution if the declarant is mentally competent on that day.

Pregnancy (3) A living will is not valid while the declarant is pregnant.

Revocation **4.—**(1) A living will is revoked if the declarant,

- (a) destroys, defaces or directs a person who is not related to him or her to destroy or deface the living will with the intention of revoking it;
- (b) signs a document directing the revocation of the living will before one witness who is not related to the declarant; or
- (c) indicates to a person who is not related to the declarant, orally or by other non-written means of communication, an intention to revoke it.

Application of subs. (1) (2) Subsection (1) applies whether or not the declarant is mentally competent.

When living will effective **5.—**(1) A living will takes effect for the purposes of this Act when it is given to a physician who is responsible for the declarant's medical care and treatment.

To be included in records (2) The physician who is given a living will shall record its existence in the declarant's medical records and insert the living will itself in the declarant's medical records.

Physician notified of revocation (3) A living will that has been given to a physician ceases to be effective for the purposes of this Act when the physician or another physician who is responsible for the declarant's medical care and treatment,



(a) is given the document that revoked the living will pursuant to clause 4 (1) (a) or (b); or

(b) is notified of the revocation by the person to whom the intention to revoke was made pursuant to clause 4 (1) (c).

(4) The physician who is notified under clause (3) (a) or (b) that the living will has been revoked shall immediately record the fact in the declarant's medical records and shall immediately remove the living will from the declarant's medical records.

To be included in records

**6.—**(1) No action, disciplinary action or other proceeding for damages lies against any person for any act done or omission made in good faith and without negligence in the observance of a living will.

No liability

(2) Subsection (1) applies even if the living will was not valid, had ceased to be valid or had been revoked if the person acting in accordance with the direction in the living will had no actual notice or reason to believe it was not valid, had ceased to be valid or had been revoked.

Idem

**7.—**(1) No person may demand that another person execute a living will as a condition to being insured for or receiving health care services.

Condition to insurance

(2) A requirement that a person execute a living will as a condition for being insured for or receiving health care services is void.

Condition void

**8.** A death that occurs subsequent to an act done or omission made in the observance of a living will shall be deemed not to be a suicide or self-induced death under a policy of life insurance.

Life insurance

**9.** Except as provided in clause 4 (1) (a) and subsection 5 (4), a person who knowingly conceals, defaces or destroys another person's living will is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both.

Offence to conceal, etc.

**10.—**(1) This Act does not create any presumption as to the intention or wishes of a person who has not executed a living will.

No presumption created

(2) This Act does not impose an obligation to perform a life-sustaining procedure where the obligation does not otherwise exist at law.

No obligations created

Commence-  
ment

**11.** This Act comes into force on the day it receives Royal Assent.

Short title

**12.** The short title of this Act is the *Living Will Act, 1988*.





Bill 104

An Act to amend the Courts of Justice Act, 1984

Mr. Cureatz



*1st Reading*      February 11th, 1988

*2nd Reading*

*3rd Reading*

*Royal Assent*



#### EXPLANATORY NOTE

The Bill increases the monetary jurisdiction of the Provincial Court (Civil Division) across the province from \$1,000 to \$3,000.

**Bill 104****1988****An Act to amend the Courts of Justice Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause 78 (1) (a) of the *Courts of Justice Act, 1984*, being chapter 11, is amended by striking out “\$1,000” in the third line and inserting in lieu thereof “\$3,000”.

(2) Clause 78 (1) (b) of the said Act is amended by striking out “\$1,000” in the third line and inserting in lieu thereof “\$3,000”.

(3) Subsection 78 (2) of the said Act is repealed.

**2.** Clause 87 (1) (f) of the said Act is repealed.

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Courts of Justice Amendment Act, 1988*. Short title



Bill 105

An Act to amend the Legislative Assembly Act

Mr. Cureatz



*1st Reading*      February 11th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The Bill provides for a non-partisan explication of the proceedings in the House as part of the existing daily television coverage.



**Bill 105**

**1988**

**An Act to amend the Legislative Assembly Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

**75a.**—(1) The Speaker shall establish a position on the staff of the Office of the Assembly to be known as the broadcast commentator. Broadcast commentator

(2) The duties of the broadcast commentator shall be to summarize and explain in a non-partisan manner each day's proceedings of the Assembly. Duties

(3) The broadcast commentator's comments shall be recorded and broadcast by the same systems that are used to provide electronic Hansard coverage of the Assembly. Recording and broadcast

**2.** This Act comes into force on the day it receives Royal Assent. Commencement

**3.** The short title of this Act is the *Legislative Assembly Amendment Act, 1988*. Short title



# Bill 106

## **An Act to amend the Municipal Elections Act and the Municipal Act**

The Hon. J. Eakins  
*Minister of Municipal Affairs*

*1st Reading*      April 5th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The purpose of the Bill is to provide for limits on campaign contributions and expenses and for their disclosure to the voters after the election. There is provision for an optional tax credit system. The Bill also amends the recount process to provide for a recount by a recount officer, rather than by a judge, who will generally be the clerk, unless another person is appointed by the clerk.

The Bill also contains amendments designed to increase the accessibility to voting by doubling the number of mandatory advance polls, standardizing voting hours and proxy voting and also making the polls more accessible to disabled and physically challenged voters. The Bill will require candidates, once elected, to maintain the qualifications for their candidacy during the term of office.

The principal provisions of the Bill are as follows:

### *Municipal Elections Act*

**SECTION 1.** The proposed section 14a clarifies that a corporation is not eligible to vote in an election.

**SECTION 2.** A candidate would have to be registered before being entitled to copies of the preliminary list of voters.

**SECTIONS 3, 6 (3).** All advance polls are to be accessible to disabled persons and persons having a mobility impairment for the 1988 election and all polls are to be accessible to such voters for the 1991 election.

**SECTIONS 4, 6 (2).** The voting hours for both regular and advance polls are to be 10 a.m. to 8 p.m.

**SECTION 5.** The provision in section 56 allowing a voter whose name is not on the voters' list to be entered on the polling list on polling day is repealed effective for the 1991 election.

**SECTION 6.—Subsection 1.** Subsection 66 (1) is amended to provide for a second mandatory advance poll to be held on the Thursday before polling day.

**SECTION 7.** Subsection 67 (1) is re-enacted to allow any elector to vote by proxy so that it is no longer necessary to show physical incapacity or absence from one's regular residence to attend school.

**SECTIONS 8, 9 and 10.** The existing recount process would be replaced in the new sections 83 to 88j. The essential features are as follows:

1. The municipal clerk is the recount officer, unless the clerk appoints another person prior to polling day or the clerk has participated in the counting of the ballots or is unable to conduct the recount.
2. A recount is automatic if the vote spread between the winner and the runner-up is less than .5 for each poll and is requested by a candidate within seven days from the date of the results. A recount continues to be held in the case of a tied vote.
3. Recounts may, as at present, be requested by the council, school board or local board within thirty days of the declaration of results.
4. Any elector who has reasonable grounds may apply for a recount to a judge and the judge shall determine whether one is to be held by the recount officer. The application to the judge is to be commenced no later than thirty days after the declaration of results.

5. The municipality, school board or local board involved shall pay the cost of a recount including reasonable remuneration for and the expenses of persons appointed as assistant recount officers and other assistants, except where the recount was held at the request of a candidate for election to a school board or local board or at the request of such board in which case the board is to pay the remuneration and expenses.

**SECTIONS 11, 12 and 13.** Section 121 which enabled council to pass a by-law regulating election contributions and expenses and requiring their reporting is repealed and replaced by a mandatory system set out in Part II, which provides for the following:

1. - There is a limit of \$750 per individual contribution.
2. Limits are placed on expenses based on a formula relating to the number of electors at \$5,500 for each council head and \$3,500 for candidates for other offices plus 50 cents per elector in each ward, municipality, local board or school jurisdiction.
3. A person is required to register by filing a notice with the clerk no earlier than the 1st day of January in an election year and no later than nomination day. Contributions cannot be accepted unless a person is a registered candidate.
4. Contributions can only be made during the campaign period defined to commence on the 1st day of January of an election year and ending three months after polling day.
5. A registered candidate may appoint a chief financial officer.
6. A fund-raising function can only be held during the campaign period.
7. A candidate will be required to file with the clerk within six months after polling day a statement of expenses and contributions the nature of which will be determined by the amount of the expenses and contributions.
8. The clerk must submit a statement to the council or board showing the information received from candidates and the names of any candidates who have failed to file.
9. If a registered candidate fails to make the required disclosure within thirty days of a written demand or fails to correct an incorrect statement within thirty days or where the candidate's campaign expenses exceed the statutory limits, that candidate is ineligible to hold elected office up to and including the next regular election.
10. If an elected candidate fails to make the required disclosure within the thirty day demand period or has exceeded the statutory limits, the clerk is to notify the candidate and the council or board to which the candidate was elected. The office then becomes vacant and the former elected candidate is ineligible to hold elected office up to and including the next regular election.
11. In addition to the above penalties, a corporation or trade union may be fined up to \$10,000 for a contravention of sections 122 to 134 and an individual may be fined up to \$1,000 for a contravention of sections 122 to 134, excluding subsection 124 (7).

A council, school board or local board has the option of adopting the proposed Part III so that contributors can obtain tax credits which are payable by the jurisdiction involved. Part III establishes identical limits on contributions and expenses with similar disclosure requirements to those contained in Part II as well as identical penalties as to ineligibility and disqualification.



The essential differences between Parts II and III of the Bill are that Part III provides for the following:

1. A candidate must register with the Commission on Election Finances established under the *Election Finances Act, 1986* which administers this Part.
2. The candidate must appoint a chief financial officer.
3. The candidate must also appoint an auditor whose duties are set out with respect to the financial statements that are to be filed by the chief financial officer.
4. Political advertising paid by others and costing in excess of \$100 is considered a contribution and, if done during the campaign period, a campaign expense.
5. Media campaign advertising is restricted to the twenty-eight day period before polling day.
6. The chief financial officer of every candidate is required to file with the Commission within six months after polling day an audited statement of expenses and contributions.
7. The Commission performs the same functions as the clerk under Part II in regard to candidates who fail to comply with the disclosure requirements.
8. A candidate is to turn any surplus over to the clerk who is to hold it in trust for the candidate in the next election. If the candidate decides not to seek nomination in the next election, the surplus is to be paid into the general fund of the municipality or board. Failure to turn over the surplus renders the candidate ineligible to be nominated at the next election, unless in the meantime the surplus is paid over. In the case of an elected candidate, the office is declared vacant.
9. Every contributor is to receive a tax credit or rebate from the municipality based on the following:

<i>Contribution</i>	<i>Tax Credit or Rebate</i>
Up to \$100	75% of contribution
\$100 to \$400	\$75 plus 50% of excess over \$100
Over \$400	the lesser of,  (a) \$225 plus 33.33% of excess over \$400 or, (b) \$350

10. No tax credits or rebates are to be provided until the Commission has notified the clerk that all the required statements have been filed.

#### *Municipal Act*

**SECTIONS 14 and 15.** Sections 37 and 38 of the *Municipal Act* are amended to clarify that a person must hold the qualifications for office to be elected and must continue to hold the qualifications during the term of office.

**Bill 106**

**1988**

**An Act to amend the  
Municipal Elections Act and the Municipal Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

**14a.** No corporation is eligible to vote in any election.

Corporation  
not eligible  
to vote

**2.** Subsection 25 (6) of the said Act is repealed and the following substituted therefor:

(6) Every registered candidate, as defined in section 122 or section 143, is entitled to be furnished by the clerk with two copies of the preliminary list of electors entitled to vote in an election.

Registered  
candidate  
entitled to  
copies

**3.** Subsection 46 (1) of the said Act is amended by inserting after “electors” in the fourth line “allows easy access to persons who have a physical disability or a mobility impairment”.

**4.** Section 52 of the said Act is amended by striking out “11” in the second line and inserting in lieu thereof “10”.

**5.** Section 56 of the said Act is repealed.

**6.—(1)** Subsection 66 (1) of the said Act is amended by inserting after “day” in the third line “and on the Thursday immediately before polling day”.

(2) Subsection 66 (3) of the said Act is amended by striking out “9” in the first line and inserting in lieu thereof “10”.

(3) Subsection 66 (4) of the said Act is amended by inserting after “necessary” in the second line “shall select locations that

allow easy access to persons who have a physical disability or a mobility impairment”.

**7.** Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1985, chapter 4, section 9, is repealed and the following substituted therefor:

Who may  
vote by  
proxy

(1) Any person whose name is entered in the polling list for a polling subdivision or who has obtained a certificate under section 33 may vote by proxy in the polling subdivision.

**8.** Section 82 of the said Act is repealed.

**9.** Section 83 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 37, section 14, is repealed and the following substituted therefor:

#### RECOUNTS

Recount  
officer

**83.**—(1) The clerk of every municipality, at the same time as the clerk appoints officials under section 4, may appoint a person as recount officer.

Disqualifi-  
cation

(2) No person who is a candidate or who is less than eighteen years of age shall be appointed a recount officer.

Oath

(3) A recount officer shall, before performing any duties, take the oath in the prescribed form.

**10.** Sections 84, 85, 86, 87 and 88 of the said Act are repealed and the following substituted therefor:

Clerk as  
recount  
officer

**84.**—(1) If a recount officer is not appointed under subsection 83 (1), subject to subsections (2) to (5), the clerk of a municipality is the recount officer for elections within the municipality or any part of it.

Recount  
officer,  
regional  
chairman

(2) The clerk of the area municipality with the greatest number of electors is the recount officer for the election of the chairman of a regional municipality.

Recount  
officer, police  
village

(3) The clerk of the municipality in which a police village is located is the recount officer for the election of the trustees of the police village.

Idem

(4) If the police village is located in two or more municipalities, the clerk of the municipality having the largest number of electors in the police village is the recount officer for the election of the trustees.

(5) The returning officers of municipalities that hold elections for school trustees under the *Education Act* are recount officers for the election of the school trustees.

Recount officer, school trustees  
R.S.O. 1980, c. 129

(6) Where the recount officer of a municipality has participated in the actual counting of the ballots for a polling subdivision in an election or, for any reason, is unable to conduct a recount arising as a result of the election, the recount officer shall immediately appoint a person to act as the recount officer for that election who is not disqualified under subsection 83 (2).

Recount officer replacement

(7) A person need not be appointed under subsection (6) if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the recount officer participated in the actual counting of the ballots.

Exception

**85.—**(1) The recount officer is responsible for the proper preparation for and conduct of a recount in the election and, for this purpose, shall direct the training of persons appointed under this section and supervise their work.

Duty of recount officer

(2) The recount officer may appoint assistant recount officers and may provide for such clerical and other assistance as is necessary to conduct a recount.

Assistants

(3) No person shall be appointed under this section who,

Disqualification

(a) is a candidate;

(b) is less than eighteen years of age; or

(c) has participated in the actual counting of the ballots for a polling subdivision in the election.

(4) Subsection (3) does not apply if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the person who is to be appointed an assistant recount officer participated in the actual counting of the ballots.

Exception

(5) The recount officer may in writing delegate to the assistant recount officers such rights and duties in relation to the preparation for and conduct of a recount as the recount officer considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the recount officer.

Delegation by recount officer



Other  
appointments

(6) The recount officer may appoint persons to aid in maintaining peace and order at the recount.

Oath

(7) Every recount officer, assistant recount officer, scrutineer and any other person authorized to attend and serve at a recount shall, before performing any duties, take the oath in the prescribed form.

Who may  
administer  
oaths

(8) The recount officer may administer any oath required in relation to a recount, and assistant recount officers may administer any such oath except an oath to be taken by the recount officer.

Remuner-  
ation and  
expenses

(9) The municipality shall pay to persons appointed under this section reasonable remuneration and the expenses incurred in attending the recount, but if the recount has been held at the request of a school board or a local board or at the request of a candidate for election to a school board or local board, the school board or local board, as the case may be, shall pay the remuneration and expenses.

Tie votes,  
recount

**86.—(1) If,**

- (a) two or more candidates nominated for the same office have an equal number of votes and both or all of the candidates cannot be declared elected to the office; or
- (b) the votes for the affirmative and negative on a by-law or question are equal,

the recount officer shall, after the tied vote has been publicly announced, immediately appoint a time and place to hold a recount of the votes cast for those candidates or on the by-law or question.

When  
recount to  
be held

(2) The time appointed by the recount officer for a recount under subsection (1) shall be no later than seven days after the declaration of the results of the election under subsection 79 (2).

Where vote  
is close

**86a.—(1) If the number of votes separating a candidate who was not declared elected and a candidate who was declared elected or, for an office to which more than one person may be elected, who was declared elected with the least number of votes, is less than one half of one vote for each polling subdivision in the election for that office, the results shall be included in the statement required under subsection 79 (2).**

(2) If subsection (1) applies and if a candidate who was not declared elected so requests in writing, the recount officer shall hold a recount.

Recount on request

(3) A request for a recount under subsection (2) shall be made to the recount officer not later than seven days after the declaration of the results of the election under subsection 79 (2).—

When request for recount to be made

(4) Upon receiving a request for a recount under this section, the recount officer shall appoint a time and place for the recount.

Time and place for recount

(5) The time appointed by the recount officer for a recount under subsection (4) shall be no earlier than ten days and no later than twenty days after the request for the recount is received.

When recount to be held

**86b.**—(1) Following an election for the members of the council of a municipality or regional municipality or of a school board or of a local board, where a recount of the votes for the office is considered to be in the public interest, the council, school board or local board, as the case may be, may pass a resolution requiring the recount officer to hold a recount.

Recount resolution by council, etc.

(2) A resolution for a recount under subsection (1) shall be passed no later than thirty days after the declaration of the results of the election under subsection 79 (2).

When resolution to be passed

(3) If a resolution for a recount is passed under subsection (1) within the time period set out in subsection (2), the recount officer shall appoint a time and place for the recount.

Time and place for recount

(4) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days after the passing of the resolution under subsection (1).

When recount to be held

**87.**—(1) If, in any election, an elector has reasonable grounds for believing that,

Application for recount by elector

- (a) the votes have been improperly counted or any ballot has been improperly rejected;
- (b) an incorrect statement of the number of votes for any candidate or for or against any by-law or question has been made; or
- (c) the votes have been improperly added up,



the elector may apply to a judge of the District Court of the county or district in which the municipality or part thereof or the administrative or head office of the school board or local board is situate for a determination whether a recount should be held.

Affidavit and  
deposit to  
accompany  
application

(2) An application for a recount under subsection (1) shall be commenced no later than thirty days after the declaration of the results of the election under subsection 79 (2) and shall be accompanied by,

- (a) an affidavit or affidavits setting out the grounds for the recount and the facts in support of those grounds; and
- (b) a deposit in the sum of \$100 as security for the costs in connection with the application.

Contents of  
affidavit

(3) An affidavit under clause (2) (a) shall be confined to facts within the personal knowledge of the person making the affidavit or to other evidence that this person could give if testifying as a witness in court.

Form of  
deposit

(4) A deposit under clause (2) (b) shall be in the form of cash or in the form of a money order or certified cheque made payable to the local registrar of the District Court, or in any combination thereof.

Parties to  
be served

(5) Copies of the notice of application, the application for a recount and affidavits in support of the application shall be served by the applicant,

- (a) where the application concerns an election to office, upon each candidate for that office; and
- (b) upon the recount officer.

Disposition  
of  
application,  
etc.

(6) The judge, if satisfied that there are sufficient grounds for a recount, shall order that a recount be held by the recount officer and may determine which ballot boxes, if any, shall be opened for the purpose of the recount.

Where  
recount  
ordered

(7) If the judge has ordered a recount, the judge shall immediately notify the recount officer in writing and the recount officer shall appoint a time and place to hold the recount.

When  
recount to  
be held

(8) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days

following the date the recount officer receives the notice from the judge.

(9) If costs are directed to be paid by the applicant, the costs shall be paid to the party entitled to them out of the money deposited as security under subsection (2). Payment of deposit

**88.**—(1) The recount officer shall give at least six days notice in writing of the time and place of the recount to, Notice of recount

- (a) the candidate who requested the recount, the council or school board or local board which passed the resolution for the recount, or the elector who applied to the judge for the recount, as the case may be;
- (b) the candidates for the office which is the subject of the recount;
- (c) if the recount officer is not the returning officer of the municipality, the returning officer of the municipality; and
- (d) if the recount concerns the election of chairman of a regional municipality, the trustees of a police village or the members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality.

(2) The recount officer shall attend the recount and bring the ballot boxes and all documents relating to the election. Attendance of recount officer

(3) If the recount officer is not the returning officer of the municipality, the returning officer of the municipality, or a person appointed by the returning officer, shall attend the recount and bring the ballot boxes and all documents relating to the election. Where recount officer not returning officer

(4) If the recount concerns the election of chairman of a regional municipality or of trustees of a police village or of members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality, or a person appointed by the clerk, shall attend the recount and bring the ballot boxes and all documents relating to the election. Regional chairman, police village and school board elections

(5) Each candidate for an office to which the recount relates and the elector, if any, who applied for the recount are entitled to be present and to be represented by counsel and to have present a scrutineer appointed for that purpose, and, Who may be present

where the recount relates to a by-law or question, such persons as the council may appoint as scrutineers are entitled to be present, but no other person, except with the permission of the recount officer, is entitled to be present at the recount.

Application  
of certain  
provisions

(6) Subsections 4 (8) and (10) and sections 6 and 7 apply with necessary modifications to scrutineers appointed under subsection (5).

What ballots  
involved in  
recounts

**88a.**—(1) If a recount relates to the election of a candidate, the recount shall be of the votes cast,

- (a) where subsection 86 (1) applies, for the two or more candidates who have an equal number of votes;
- (b) where subsection 86a (1) applies, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected and for the defeated candidate or candidates who received enough votes for the same office to fall within the margin of votes prescribed by that subsection; and
- (c) in all other cases, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected by the returning officer and for the defeated candidate who received the highest number of votes for the same office.

Recount of  
votes cast  
for other  
candidates

(2) Notwithstanding subsection (1), the recount officer may conduct a recount of the votes cast for any other candidate whose election or right to any other office may be affected by the recount conducted under subsection (1).

Procedure at  
recount

**88b.**—(1) At the time and place appointed for the recount, and in the presence of those persons who are entitled to be present and who have attended, the recount officer shall add the votes from the statements returned to the returning officer by the deputy returning officers, or shall count the ballots received by the returning officer from the deputy returning officers and the number of votes counted at the election, or both, as the recount officer considers appropriate, and for this purpose shall open the sealed envelopes containing,

- (a) the ballots that were not objected to and were counted;

- (b) the ballots that were objected to but were counted;
- (c) the rejected ballots;
- (d) the cancelled ballots;
- (e) the ballots that were used but were unmarked;
- (f) the declined ballots; and
- (g) the unused ballots.

(2) Subject to sections 88c and 88d, the recount officer, in conducting the recount, shall determine the validity of ballots, and shall verify or correct the statement of the vote for each polling subdivision.

Verification  
of statement  
of the vote

**88c.**—(1) A candidate, a representative of the candidate or a scrutineer who objects to the validity of a ballot or to the counting of votes in any ballot may request that the recount officer make an application to a judge of the District Court for an order determining the validity of the ballot.

Application  
to judge

(2) No hearing under subsection (1) shall be held until the recount officer has complied with subsection 88b (2).

When  
hearing to  
be held

(3) If an application is made under subsection (1), the recount officer shall,

Procedure  
where  
application  
made

- (a) write the number of the polling subdivision on the back of and initial any disputed ballots that are the subject of the application and seal them in a separate envelope clearly marked so as to indicate its contents;
- (b) give at least six days notice in writing of the time and place of the hearing of the application to the parties to the recount; and
- (c) make suitable arrangements for the safekeeping of any ballots that are not the subject of the application and any documents relating to the election that are not relevant to the application.

(4) The recount officer shall attend the hearing of the application and bring the envelope containing the disputed ballots that are the subject of the application and any documents relating to the election that are relevant to the application.

Attendance  
of recount  
officer at  
hearing



Procedure  
at hearing

(5) The judge, in the presence of the persons entitled to be present at the recount and who have attended the hearing, shall determine the validity of the ballot or to the counting of votes in any ballot and for this purpose shall open the sealed envelope containing the disputed ballots.

Distin-  
guishing  
disputed  
ballots

(6) If a party to the application requests the judge to do so, the judge shall initial any ballots the validity of which, notwithstanding any order to the contrary made by the judge under this section, is disputed by the party and seal the disputed ballots in a separate envelope clearly marked so as to indicate its contents.

Procedure on  
completion  
of hearing

(7) Upon completion of the hearing, the judge shall make an order determining the validity of the ballot and shall,

- (a) advise the persons present of the order;
- (b) except as provided by subsection (6), seal the disputed ballots in their original envelope; and
- (c) return the envelope referred to in clause (b), along with any documents relating to the election that were examined during the course of the hearing, to the custody of the recount officer.

Judge to  
give order  
to recount  
officer

(8) The judge shall give a certified copy of the order to the recount officer unless, within five days following the hearing, the judge receives a notice of appeal under section 88j.

Recount  
officer to  
complete  
recount

(9) Upon receipt of the judge's order, the recount officer shall complete the recount.

Costs of  
application

(10) Subject to subsection (11), the costs of the application shall be borne by the municipality, school board or local board to which the recount relates.

Idem

(11) If the judge finds that any objection is frivolous or vexatious, the judge may order that the costs of the application be paid by the person who made the objection.

Where  
no appeal,  
envelope to  
be returned

(12) Upon the expiry of the time for appeal from a decision of the judge, if no appeal has been taken, the judge shall return the envelope described in subsection (6) to the custody of the recount officer.

Distin-  
guishing  
disputed  
ballots

**88d.** Notwithstanding section 88c, if a party to the recount requests the recount officer to do so, the recount officer shall write the number of the polling subdivision on the

back of and initial any disputed ballots and seal them in a separate envelope clearly marked so as to indicate its contents.

**88e.**—(1) Upon completion of the recount, the recount officer shall, Procedure on completion of recount

- (a) announce the result to the persons present at the recount; and
- (b) except as provided in section 88d, seal the ballots in their original envelopes and the original statements in a separate envelope clearly marked so as to indicate its contents.

(2) The recount officer shall certify in writing the result of the recount, unless, within five days following the completion of the recount, the recount officer receives a notice of appeal under section 88j. Certification by recount officer

(3) Following certification of the result of the recount, the returning officer shall declare the candidate or candidates, as the case may be, having the greatest number of votes to be elected or certify to the council the result of the vote with respect to a by-law or question, as applicable. Declaration of result by returning officer after recount, etc.

**88f.**—(1) In the case of a tied vote for candidates for any office for which one person only is to be elected, or for which the holding of any other office is to be determined as a result of a recount, the successful candidate shall be determined by lot conducted by the recount officer. Tied votes

(2) The lot shall be conducted by placing the names of the candidates on equal size pieces of paper in a box, and the name drawn by the recount officer shall be the successful candidate. Method of conducting lot

**88g.** The costs of the recount, unless otherwise ordered by a judge, shall be borne by the municipality, school board or local board to which the recount relates. Costs of recount

**88h.**—(1) Upon the expiry of the time for appeal from a decision of the recount officer, if no appeal has been taken, the recount officer shall return the envelopes described in section 88d and clause 88e (1) (b) to the custody of the appropriate clerk or returning officer. If no appeal, envelopes to be returned

(2) If an appeal is taken from the decision of the recount officer on the recount, the recount officer shall return the envelopes of ballots and the original statements of the vote described in clause 88e (1) (b) that are not required for the Documents not required on appeal



appeal to the custody of the appropriate clerk or returning officer.

Right to sit  
pending  
recount

**88i.**—(1) A candidate declared elected is entitled to sit on the council, school board or local board notwithstanding that a request or application for a recount has been filed or a resolution for a recount has been passed, but where the recount determines that some other person was elected, that other person is, notwithstanding that an appeal is pending, entitled to sit and vote until the appeal is disposed of.

Decisions  
not affected

(2) A decision of a council, school board or local board reached with the participation of a member who is subsequently declared not to be entitled to sit on the council, school board or local board is not affected by that participation.

#### APPEAL FROM DECISION OF JUDGE OR RECOUNT OFFICER

Appeal from  
decision of  
judge or  
recount  
officer

**88j.**—(1) Any party may appeal to the Divisional Court from the decision of the judge on the application or of the recount officer on the recount, as the case may be, by giving written notice not more than five days following the completion of the hearing or the recount to the other parties concerned and to the judge or the recount officer and the notice may limit the appeal to specified disputed ballots.

Service  
of notice

(2) The notice shall be served upon the other parties personally or upon the solicitor who acted for the party or in the manner that the judge of the Divisional Court may direct.

Documents  
to be  
forwarded

(3) The judge or recount officer shall forward to the Registrar of the Supreme Court by registered mail,

- (a) the notice of appeal;
- (b) a certificate showing the findings of the judge or recount officer on the ballots or statements in dispute;
- (c) if the appeal is limited to specified disputed ballots, the ballots or statements of the vote that are the subject of the appeal in the envelopes described in subsection 88c (6) and section 88d; and
- (d) if the appeal is not limited, all of the ballots, in the envelopes referred to in clause 88c (7) (b) or 88e (1) (b).

(4) The judge or recount officer shall await the result of the appeal before preparing the certificate under subsection 88c (8) or 88e (2).

Certificate to be issued after appeal

(5) The judge or recount officer shall, upon request, allow each party to make a copy of the order or certificate, as the case may be, before it is forwarded to the Registrar.

Copy of certificate

(6) On receipt of the ballots, notice and statement, the Registrar shall immediately obtain an appointment from the Divisional Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

Appointment for hearing

(7) One judge of the Divisional Court shall determine the objection pertaining to, or count again, the ballots or such of them as are the subject of appeal, or review the re-addition, as the case may be, and shall immediately certify in writing the decision of the court to the judge of the District Court or to the recount officer.

Determination by Divisional Court

(8) The judge or recount officer, in compliance with the decision of the Divisional Court, shall certify the result without delay.

Certificate to reflect decision

**11. Subsection 103 (2) of the said Act is repealed.**

**12. Section 121 of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 37, section 25 and amended by 1985, chapter 4, section 10, is repealed.**

**13. The said Act is further amended by adding thereto the following Parts:**

**PART II**

**121. In this Part,**

Definitions

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and contributions of goods and services to the registered candidate, but does not include,

(a) audit and accounting fees,

(b) interest on loans under section 127,

- (c) an expense incurred in holding a fund-raising function referred to in section 126,
- (d) an expense incurred for victory parties held and appreciation notices published after polling day,
- (e) an expense relating to a recount in respect of the election, and
- (f) an expense relating to an action commenced under section 106;

“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election, or
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required,

and ending three months after polling day;

“contribution” means a contribution made to a registered candidate or representative of a registered candidate for purposes of the election of the registered candidate at the next election, but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour, and
- (b) any service voluntarily performed for a registered candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual’s employer, compensation in excess of what the individual would normally receive during the period the service was performed;

“municipality” means a city, town, village, police village, township, regional municipality or metropolitan municipality;

“registered candidate” means a candidate registered under section 122;

“trade union” means a trade union as defined in the *Labour Relations Act* or the *Canada Labour Code* that holds bargaining rights for employees in Ontario to whom those Acts apply and includes any central, regional or district labour council in Ontario.

R.S.O. 1980,  
c. 227  
R.S.C. 1970,  
c. L-1

## REGISTRATION

**122.**—(1) Every person who proposes to be a candidate shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the clerk of the municipality who is responsible for the conduct of the election a notice of registration in the prescribed form.

Registration  
of candidate

(2) In the case of a new election, the notice of registration referred to in subsection (1) shall be filed with the clerk no earlier than the day on which,

Registration  
in new  
elections

- (a) an order to hold a new election is given in any judicial proceedings;
- (b) the council of the municipality passes a by-law to hold a new election; or
- (c) the clerk receives from the secretary of the school board notice that a new election is required,

and no later than nomination day.

(3) A person who files a notice of registration under subsection (1) becomes a registered candidate on the day of filing.

When  
candidate  
registered

(4) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

No contri-  
butions to  
unregistered  
candidate

(5) The clerk shall keep a register of every person who has filed a notice of registration under subsection (1) setting out,

Register

- (a) the date that the registered candidate is duly nominated under section 36;



- (b) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (c) the full name and address of the registered candidate;
- (d) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (e) the full names and addresses of the auditor and the chief financial officer, if any, of the registered candidate;
- (f) the full names and addresses of all persons authorized by the registered candidate to accept contributions;
- (g) the name and address of every chartered bank, trust company or other financial institution in Ontario that is used by or on behalf of the registered candidate for the deposit of any contributions;
- (h) the full names and addresses of the persons, if any, responsible for making the deposits referred to in clause (g); and
- (i) the date of registration.

Effective  
date of  
registration

(6) A notice of registration under subsection (1) may be filed with the clerk by registered mail in which case it shall be deemed to be filed on the day it is mailed.

Where  
registered  
candidate  
withdraws,  
etc.

(7) The campaign period with respect to a registered candidate shall be deemed to expire,

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;
- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of death,

and the registered candidate or the chief financial officer shall file with the clerk the statement referred to in section 132 within six months after polling day.

(8) If the information referred to in subsection (5) is altered, the registered candidate shall immediately notify the clerk in writing of the alteration and, upon receipt of the notice, the clerk shall vary the register accordingly.

Variation  
of register

#### CHIEF FINANCIAL OFFICERS

**123.**—(1) Every person who proposes to be a candidate may appoint a chief financial officer before or after filing the notice of registration with the clerk.

Chief  
financial  
officer

(2) If the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the clerk of the full name and address of the new chief financial officer.

Replacement

(3) The chief financial officer shall be responsible for ensuring that,

Duties  
of chief  
financial  
officer

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in the appropriate accounts;
- (c) proper receipts are completed;
- (d) the financial statements required under section 132 and the auditor's report on the statements are filed with the clerk;
- (e) contributions consisting of goods or services are valued and recorded; and
- (f) proper direction is given to persons authorized to incur expenses.

(4) If a registered candidate has not appointed a chief financial officer, the registered candidate is responsible for the duties set out in subsection (3).

Where  
no chief  
financial  
officer

#### CONTRIBUTIONS

**124.**—(1) Contributions to registered candidates may be made only by individuals, corporations and trade unions and may be made only during the campaign period.

Contributions



Contributions  
to be made  
in campaign  
period

(2) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept contributions at any time other than during the campaign period.

How contri-  
butions of  
money to be  
made

(3) Money contributions to registered candidates in amounts in excess of \$25 shall only be made by,

- (a) a cheque having the name of the contributor legibly printed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Deposit of  
funds

(4) All moneys accepted by or on behalf of a registered candidate shall be paid into an account registered with the clerk under subsection 122 (5).

Refund of  
contributions

(5) If the registered candidate or the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the registered candidate or the chief financial officer shall, within thirty days after so learning and upon obtaining the contributor's copy of the receipt issued under section 125 in respect of that contribution, return the contribution or an amount equal to the sum contributed.

Anonymous  
contributions  
payable to  
municipality

(6) Any contributions not returned to the contributor under subsection (5) or any anonymous contribution received by a registered candidate shall not be used or spent, but shall be paid over to the clerk and become part of the general funds of the municipality.

Limitation on  
contributions

(7) No individual, corporation or trade union shall make a contribution in money, goods and services to any registered candidate which in total exceeds \$750 in value during any campaign period.

Registered  
candidate's  
funds,  
spouses's  
funds

(8) Any moneys used for an election campaign by a registered candidate out of the registered candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this section, but the limit on the total amount of contributions established under subsection (7) does not apply in respect of those funds.

(9) Every registered candidate shall submit to the clerk at the same time as the financial statement is filed under section 132, a statement in writing setting out campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the registered candidate, together with all receipts and claims for those expenses.

Statement to be submitted to clerk

**125.**—(1) No individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to that individual, corporation or trade union.

Contributor to contribute only funds belonging to contributor

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No registered candidate and no individual, corporation or trade union on behalf of the registered candidate shall solicit or accept any contribution contrary to subsection (1).

Prohibition

(4) No registered candidate shall accept funds from,

No funds from political parties, etc. 1973-74, c. 14 (Can.)

(a) a federal political party registered under the *Canada Elections Act* or any federal constituency association or registered candidate at a federal election endorsed by such federal political party; or

(b) a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act, 1986*.

1986, c. 33

(5) A registered candidate shall issue receipts for every contribution accepted.

Receipts

(6) A contribution to a registered candidate made through an unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution.

Group contributions

(7) The amounts making up a contribution under subsection (6) that are attributable to an individual, corporation or trade union are contributions of that individual, corporation or trade union for the purposes of subsection 124 (7).

Application to amounts making up contribution

(8) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept any contributions in excess of the limits imposed under subsection 124 (7).

Receipt of excess contributions prohibited

Restriction  
on contri-  
butions

(9) No registered candidate shall directly or indirectly solicit or accept contributions from,

- (a) an individual normally resident outside Ontario;
- (b) a corporation that does not carry on business in Ontario; or
- (c) a trade union other than a trade union as defined in this Part.

Trade  
unions,  
contributions

(10) Contributions of not more than 15 cents per month by a member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of section 124 and this section, but any amount contributed to a registered candidate shall be deemed to be a contribution from the trade union.

Record of  
contributions  
to be kept

(11) Every registered candidate shall keep a record of all contributions in excess of \$25 or having a value in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contributions from a single source that in the aggregate exceed \$100, the name and address of the contributor.

Definition

**126.**—(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held.

When fund-  
raising  
functions to  
be held

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period.

Income to  
be reported

(3) The gross income from a fund-raising function shall be recorded and reported to the clerk by the registered candidate or the chief financial officer.

Where  
charge may  
be considered  
not a contri-  
bution

(4) If a charge is made for a fund-raising function by the sale of tickets or otherwise, any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate, be considered not to be a contribution.

Where  
amounts to  
be considered  
contributions

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of current market value shall be considered a contribution.

Collection of  
money at  
meetings

(6) If a meeting is held on behalf of or in relation to the affairs of a registered candidate and money is given in

response to a general collection of money solicited from the persons in attendance at the meeting, no amount shall be given anonymously by any person in excess of \$10 and the amounts so given shall be considered not to be contributions, but the gross amount collected shall be recorded and reported to the clerk by the registered candidate or the chief financial officer.

#### BORROWING

**127.**—(1) A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the registered candidate and reported to the clerk in the financial statement filed under subsection 132 (1). Borrowing

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1). Limitation

#### LOAN GUARANTEE

**128.**—(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate. Guarantee of loan to registered candidates prohibited

(2) An individual, corporation or trade union that is eligible to make a contribution may guarantee any loan referred to in subsection 127 (1). Exception

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 127 (1) shall not be considered to be a contribution under section 124, but if the guarantor forgives or waives all or any part of the borrower's indebtedness that has been guaranteed, the amount so forgiven or waived shall be considered to be a contribution under section 124 and may be forgiven or waived only to the extent that it does not exceed the maximum contribution permitted under subsection 124 (7). When loan considered contribution

#### CAMPAIGN EXPENSES

**129.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the registered candidate by persons authorized by the registered candidate. Authority to incur campaign expenses



Certificate  
of authority

(2) Every person authorized to incur a campaign expense shall, upon request, show a certificate, in the prescribed form, signed by the registered candidate as proof of the authority.

Record of  
campaign  
expenses

(3) Every registered candidate shall keep a record of all campaign expenses.

Limitation  
on campaign  
expenses

(4) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation, trade union or unincorporated association acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed the aggregate amount of \$5,500 plus \$0.50 per elector.

Idem

(5) Subject to subsection (6), the total campaign expenses incurred by a registered candidate in an election for the office of,

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality if this office is required to be filled by the vote of the electors of an area municipality; or
- (c) member of a school board or of a local board whose members are to be elected at elections required to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation, trade union or unincorporated association acting on behalf of the registered candidate during the period commencing with the date of registration and ending on polling day in the election shall not exceed the amount of \$3,500 plus \$0.50 per elector.

Limitation  
on campaign  
expenses,  
ward  
elections

(6) If the municipality or the school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of the wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Determi-  
nation of  
number of  
electors by  
returning  
officer

(7) For the purpose of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local

board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

(8) After determining the number of electors under subsection (7), the clerk shall calculate, for each office, the maximum amount of campaign expenses that may be incurred by a registered candidate under subsection (4), (5) or (6), as applicable, certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or send by registered mail a copy of the certificate to each registered candidate for the office.

Calculation and certification of maximum campaign expenses by returning officer, etc.

(9) Certification of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office by the clerk under subsection (8) shall be conclusive evidence of that fact and shall not be open to challenge.

Certificate conclusive

**130.**—(1) Every individual, corporation or trade union that has any claim for payment in relation to a campaign expense shall submit the claim within three months after polling day to the registered candidate who incurred the expense.

Time for submission of claims of payment

(2) Every payment of a campaign expense shall be made by the registered candidate or the chief financial officer who incurred or on whose behalf the campaign expense was incurred and, except where the campaign expense is less than \$25, a receipt shall be obtained setting out the particulars and proof of payment.

Payment of expenses by registered candidate

(3) Payment of any campaign expense shall be made by cheque drawn on an account registered with the clerk under subsection 122 (5).

Method of payment

(4) If the registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

Disputed claims

#### AUDITORS

**131.**—(1) If contributions received by a registered candidate exceed \$20,000 or expenses incurred by the registered candidate exceed \$20,000 during the campaign period, the registered candidate shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately inform the clerk of the full name and address of the auditor.

Appointment of auditor

R.S.O. 1980, c. 405

(2) The auditor shall make a report to the registered candidate or the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 132, and shall make such exami-

Report of auditor



nation of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards.

Idem

(3) If,

- (a) the auditor has not received from the registered candidate or the chief financial officer all the information and explanation that is required to make the report; or
- (b) proper accounting records have not been kept by the registered candidate or the chief financial officer,

the auditor shall make a statement to that effect in the report made under subsection (2).

Right of  
access

(4) An auditor appointed under subsection (1) shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate.

Co-operation  
required

(5) The registered candidate or the chief financial officer shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (2).

#### STATEMENTS, REPORTS AND STATUTORY DECLARATIONS

Filing of  
financial  
statement

**132.**—(1) Subject to subsections (2) and (3), every registered candidate shall file with the clerk who was the returning officer in the election within six months after polling day a financial statement and auditor's report in the prescribed form which shall contain,

- (a) all income received and expenses incurred in the campaign period;
- (b) a list of contributions in the form of goods or services and the value of them received by or on behalf of the registered candidate during the campaign period;
- (c) the name, address and contribution of each individual, corporation or trade union that made a contribution, whether in the form of money, goods or services, if the contribution was more than \$100; and

- (d) a list of campaign expenses, paid and outstanding, incurred in a campaign period and a statement of disputed claims.

(2) If the contributions received by or on behalf of a registered candidate do not exceed \$20,000 and expenses incurred by or on behalf of the registered candidate do not exceed \$20,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a report in the prescribed form containing the information required in subsection (1).

Where report  
sufficient

(3) If the contributions received by or on behalf of a registered candidate do not exceed \$1,000 and expenses incurred by or on behalf of such registered candidate do not exceed \$1,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a statutory declaration in the prescribed form to that effect.

Where  
statutory  
declaration  
sufficient

(4) After the time for the filing of a statement, report or declaration under subsection (1), (2) or (3) has expired, the clerk shall immediately prepare a statement in the prescribed form disclosing,

Clerk  
to prepare  
statement

- (a) the information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

(5) After the time prescribed for making full disclosure under subsection (1) has expired, the clerk shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement, report or declaration, a notice in the prescribed form demanding that the registered candidate file a statement, report or declaration within thirty days from the date of the notice.

Demand  
to candidate  
to file

(6) The notice under subsection (5) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not elected, shall be ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the statement, report or declaration within thirty days of the date of the notice.

Contents  
of demand  
notice

Publishing  
notice of  
non-com-  
pliance

(7) The clerk shall post a notice of non-compliance in the prescribed form in two conspicuous places in the municipality and, where there is a newspaper having general circulation in the municipality, by publishing the notice in such newspaper.

Clerk  
to prepare  
supple-  
mentary  
statement

(8) After the thirty day period for the filing of a statement, report or declaration has expired, the clerk shall immediately prepare a supplementary statement in the prescribed form disclosing,

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section, within the thirty day period allowed by subsection (5),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Ineligibility  
respecting  
future  
elections

**133.—**(1) If a registered candidate,

- (a) fails to file a financial statement, a report or statutory declaration as required by section 132 within thirty days of the date of the notice sent under subsection 132 (5);
- (b) files a financial statement, a report or statutory declaration as required by section 132 that is either incorrect or does not comply with section 132 and fails to file a correction statement, report or declaration, as the case may be, within thirty days from the date that the clerk files the statement under subsection 132 (4); or
- (c) incurs campaign expenses in excess of the amount permitted under section 129,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

Forfeiture  
of office

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has exceeded the amount referred to in clause (1) (c), the clerk shall immediately notify in writing the registered candidate and the council, school board or local board, as the case may

be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

Ineligibility  
respecting  
future  
elections

#### ACCESS TO DOCUMENTS

**134.**—(1) Documents, financial statements, reports and declarations filed with the clerk under this Part are public records and may be inspected by any person upon request at the office of the clerk during normal office hours.

Inspection of  
documents

(2) Any person may make extracts from the statements, reports or declarations referred to in subsection (1) and is entitled to copies thereof upon payment for the preparation of the copies at such rate as the clerk charges for the preparation of copies of other documents.

Extracts and  
copies

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the clerk under this Part for the purposes of commercial solicitation.

Not to be  
used for  
commercial  
solicitation

(4) This section applies to a statement prepared by the clerk that is required to be submitted to the council of the municipality, the school board or local board under subsection 132 (4) or (8).

Section  
applicable to  
certain  
statements

#### OFFENCES

**135.**—(1) A corporation or trade union that contravenes any of sections 122 to 134 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offence by  
corporation  
or trade  
union

(2) An individual who contravenes any of sections 122 to 134, except subsection 124 (7), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence

(3) If the total campaign expenses incurred by a registered candidate or any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 129 for the

Additional  
penalty



office subject to election, the candidate, in addition to the fine set out in subsection (2), is liable to a fine equal to the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 129.

One year  
limitation

**136.** No prosecution shall be instituted for a contravention of any of sections 122 to 134 more than one year after the facts upon which the prosecution is based first came to the knowledge of the informant.

Obstructing  
investigation,  
etc.

**137.—(1)** No person shall obstruct a person making an investigation or examination under this Act or withhold or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

False  
statements

**(2)** No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the clerk under section 132 or 133.

### PART III

Definitions

**138.** In this Part,

R.S.C. 1970,  
c. B-11

“broadcasting undertaking” means a broadcasting undertaking as defined in section 2 of the *Broadcasting Act* (Canada);

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and contributions of goods and services to the registered candidate but not including,

- (a) auditor’s and accounting fees,
- (b) interest on loans authorized under section 162,
- (c) an expense incurred in holding a fund-raising function referred to in section 153,
- (d) an expense incurred for victory parties and appreciation notices published after polling day,
- (e) an expense relating to a recount in respect of the election,

- (f) an expense relating to an action commenced under section 106, and
- (g) other expenses not of partisan value that are set out in guidelines provided by the Commission;

“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election, or
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required,

and ending three months after polling day;

“Commission” means the Commission on Election Finances established by the *Election Finances Act, 1986*;

1986, c. 33

“contribution” means a contribution made to a representative of a registered candidate but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour,
- (b) any service voluntarily performed for a candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual’s employer, compensation in excess of what the individual would receive during the period the service was performed, and
- (c) any moneys, goods or services solicited by or donated to a registered candidate for purposes other than those set out in subsection 143 (3);

“municipality” means a city, town, village, police village, township, regional municipality or metropolitan municipality;



“news reporting done in good faith” means interviews, commentaries or other works prepared for and published by any newspaper, magazine or other periodical publication or broadcast on the facilities of any broadcasting undertaking without charge to any candidate registered under this Part;

“outdoor advertising facilities” means outdoor facilities provided by any person that is in the business of providing these facilities on a commercial basis for advertising purposes but does not include radio, television, newspaper, magazine or other periodical publications;

“registered candidate” means a candidate registered under section 143;

“trade union” has the same meaning as in Part II.

#### APPLICATION

Council may  
by by-law  
adopt this  
Part

**139.**—(1) Notwithstanding Part II, the council of a municipality may pass a by-law to have this Part apply to elections for the office of member of council including the head of the council of the municipality.

Application  
of Part

(2) If a by-law is passed under subsection (1), this Part applies to the election of members of council.

By-laws to  
be sent to  
Commission  
and clerk

(3) Where the council of a regional municipality or metropolitan municipality passes a by-law under subsection (1), the clerk of the regional or metropolitan municipality shall send a copy of the by-law to the Commission and to the clerk of any area municipality who is responsible for the conduct of any election to the council of the regional or metropolitan municipality.

By-laws to  
be sent to  
Commission

(4) Where the council of a municipality, other than a regional or metropolitan municipality, passes a by-law under subsection (1), the clerk of the municipality shall send a copy of the by-law to the Commission.

School board  
may adopt  
this Part

**140.**—(1) Notwithstanding Part II, where members of a school board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the school board may pass a resolution to have this Part apply to elections of members of the board.

Application  
of Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of members of the board.

(3) Where a school board passes a resolution under subsection (1), the secretary of the board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

Resolution of school board to be sent to Commission and clerk

**141.**—(1) Notwithstanding Part II, where members of a local board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the local board may pass a resolution to have this Part apply to elections of members of the board.

Local board may adopt this Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of the board.

Application of Part

(3) Where a local board passes a resolution under subsection (1), the secretary of the local board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

Resolution of local board to be sent to Commission and clerk

**142.** A by-law under section 139 or a resolution under section 140 or 141 shall be passed prior to the 1st day of January of an election year and, once passed, shall remain in force until repealed by a by-law of the council of the municipality or by a resolution of the school board or the local board, as the case may be, but no such repealing by-law or resolution shall be passed or take effect in an election year.

When by-laws or resolution to be passed or repealed

#### REGISTRATION

**143.**—(1) Where the council of a municipality passes a by-law under section 139 or a school board or local board passes a resolution under section 140 or 141, every person seeking election to office on the council, school board or local board, as the case may be, shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the Commission an application for registration under this Part.

Application for registration as candidate

(2) In the case of a new election, the application for registration referred to in subsection (1) shall be filed with the Commission no earlier than the day on which,

Application, new elections

- (a) an order to hold a new election is given in any judicial proceedings;
- (b) the council of the municipality passes a by-law to hold a new election; or

- (c) the clerk receives from the secretary of a school board notice that a new election is required,

and not later than nomination day.

No contri-  
butions to  
unregistered  
candidate

(3) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

Register

(4) The Commission shall maintain a register of candidates in relation to each election and shall register in it any candidate who files an application for registration with the Commission setting out,

- (a) that the person,
  - (i) has been duly nominated for election to office in accordance with this Act and whose nomination is certified by the clerk, or
  - (ii) has not been so nominated but proposes to become so;
- (b) the name of the office for which the candidate has been or proposes to be nominated;
- (c) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (d) the full name and address of the registered candidate;
- (e) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (f) the full names and addresses of the auditor and the chief financial officer of the registered candidate;
- (g) the full name and addresses of all persons authorized by the registered candidate to accept contributions;
- (h) the name and address of every chartered bank, trust company or other financial institution in Ontario

that is used by or on behalf of the registered candidate for the deposit of any contributions;

- (i) the full names and addresses of the persons responsible for making the deposits referred to in clause (h).

(5) A registered candidate who files an application under subsection (4) shall be deemed to be registered on the day of filing. Effective date of registration

(6) An application under subsection (4) may be filed with the Commission by registered mail in which case it shall be deemed to be filed on the day it is mailed. Idem

(7) The campaign period with respect to a registered candidate shall be deemed to expire, Where registered candidate withdraws, etc.

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;
- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of his death,

and the chief financial officer for that registered candidate shall file with the Commission the statement referred to in section 169 and file a copy of it with the clerk within six months after the expiration of the campaign period.

(8) If the information referred to in clauses (4) (d) to (i) is altered, the candidate shall immediately notify the Commission in writing of the alteration, and, upon receipt of the notice, the Commission shall vary the register accordingly. Variation of register

**144.**—(1) After registering a candidate under subsection 143 (4), the Commission shall notify in writing the clerk of the municipality who is responsible for the conduct of the election and indicate to the clerk, Notification by Commission to clerk

- (a) the full name and address of the registered candidate; and
- (b) the name of the office for which the registered candidate has been, or will be nominated.



Clerk to  
maintain list  
of candidates

(2) The clerk shall maintain a list of all registered candidates and the office for which the registered candidate has been, or will be, nominated.

Notification  
of changes

(3) Where the full name and address of a registered candidate is varied by the Commission under subsection 143 (8), the Commission shall immediately notify the clerk in writing of the variation, and, upon receipt of the notice, the clerk shall vary the list of registered candidates accordingly.

#### CHIEF FINANCIAL OFFICERS

Chief  
financial  
officer

**145.**—(1) Every person who is applying for registration under this Part, before filing an application with the Commission, shall appoint a chief financial officer.

Replacement

(2) Where the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the Commission of the full name and address of the new chief financial officer.

Duties  
of chief  
financial  
officer

(3) The chief financial officer shall be responsible for ensuring that,

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in a depository on record with the Commission;
- (c) proper receipts are completed and dealt with in accordance with this Part;
- (d) the financial statements as required by section 169 together with the auditor's report on those statements, are filed with the Commission in accordance with this Part;
- (e) contributions consisting of goods or services are valued and recorded in accordance with this Part; and
- (f) proper direction is given to persons authorized to incur expenses.

#### CONTRIBUTIONS

Contributions

**146.**—(1) Contributions to registered candidates may be made by individuals, corporations and trade unions only during the campaign period.



(2) Money contributions to registered candidates in amounts in excess of \$25 shall be made only by, How contributions of money to be made

- (a) a cheque having the name of the contributor legibly printed or typed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

(3) All moneys accepted by or on behalf of a registered candidate shall be paid into an account on record with the Commission. Deposit of funds

**147.**—(1) If the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the chief financial officer shall, within thirty days after so learning and upon obtaining the contributor's copy of the receipt issued under section 155 in respect of that contribution, return the contribution or an amount equal to the sum contributed. Refund of contributions

(2) Any contributions not returned to the contributor in accordance with subsection (1) or any anonymous contribution received by a registered candidate shall not be used or spent, but shall be paid over to the Commission and become part of the general funds of the Commission to be used by the Commission in carrying out its responsibilities under this or any other Act. Anonymous contributions

**148.**—(1) No individual, corporation or trade union shall make a contribution in money, goods and services to a registered candidate which in total exceeds \$750 in value during any campaign period. Limitation on contributions

(2) Any moneys used for an election campaign by a registered candidate out of the candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this Part, but the limit on the total amount or value of contributions established under subsection (1) does not apply in respect of those funds. Registered candidate's funds, spouse's funds

(3) Every registered candidate shall submit to the chief financial officer a statement in writing setting out all campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the candidate, together Statement to be submitted

with all receipts and claims for those expenses, within six months after polling day.

Contributor  
to contribute  
only funds  
belonging to  
contributors

**149.**—(1) Subject to section 159, no individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to the individual, corporation or trade union.

Exception

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Prohibition

(3) No registered candidate and no individual, corporation or trade union on behalf of the candidate, shall solicit or accept any contribution contrary to subsection (1).

No funds  
from political  
parties, etc.  
1973-74,  
c. 14 (Can.)

**150.** No registered candidate shall accept funds from,

- (a) a federal political party registered under the *Canada Elections Act* or any federal constituency association or candidate at a federal election endorsed by such federal political party;
- (b) a provincial political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act, 1986*.

1986, c. 33

Determina-  
tion of  
value of  
goods and  
services

**151.**—(1) The value of goods and services provided as a contribution to a registered candidate is,

- (a) where the contributor is in the business of supplying these goods and services, the lowest amount charged by the contributor for an equivalent amount of similar goods and services at or about the time and in the same market area;
- (b) where the contributor is not in the business of supplying these goods or services, the lowest amount charged, at or about the time the goods or services are provided, by any other individual, corporation or trade union providing similar goods or services on a commercial retail basis in the same market area.

Where goods  
or services  
less than  
\$100

(2) Goods or services having a total value of \$100 or less may, at the option of the individual, corporation or trade union providing these goods or services, be considered not to be a contribution for the purposes of this Part.

(3) Where goods or services are provided to a registered candidate for a price that is less than the value of the goods or services as determined under subsection (1), the amount that the price is less than that value shall, subject to subsection (2), be a contribution for the purpose of this Part.

Where goods or services provided at less than value

**152.**—(1) Where any individual, corporation or trade union with the knowledge and consent of a registered candidate promotes the election of the candidate or opposes the election of any other registered candidate by advertising on the facilities of any broadcasting undertaking, by publishing an advertisement in a newspaper, magazine or other periodical publication, by printing leaflets, pamphlets or other documents or through the use of any outdoor advertising facility and the amount of the cost of the advertisement,

Political advertisements

- (a) in the case of any single advertisement, is more than \$100; and
- (b) in the case of any advertisements from a single service broadcast or published in any campaign period, in total exceeds \$100,

this amount shall be considered to be a contribution and, if done during the campaign period, a campaign expense of the candidate with whose knowledge and consent the political advertising was done.

(2) Notwithstanding subsection (1), where political advertising is provided on the facilities of any broadcasting undertaking without charge to registered candidates in a particular municipality or school board or local board jurisdiction in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines issued thereunder, such political broadcasts shall not be considered a contribution or a campaign expense.

Idem

R.S.C. 1970,  
c. B-11

(3) No individual, corporation or trade union shall cause any political advertisement to be broadcast on the facilities of any broadcasting undertaking or published in any newspaper, magazine or other periodical publication or through the use of any outdoor advertising facility unless the broadcaster or publisher of the political advertisement is furnished with the identification, in writing, of the individual, corporation or trade union sponsoring the political advertisement.

Identity of sponsor of advertisement to be known

(4) A broadcaster who broadcasts or a publisher who publishes a political advertisement shall maintain records for a period of two years after the date of the broadcast or publication setting out the advertisement, the charge for it and any

Records to be maintained of political advertisement

material relating to identification furnished to the broadcaster or publisher in connection with the advertisement and shall permit the public to inspect these records during normal office hours.

Name of  
sponsor to be  
included in  
political  
advertising

(5) All political printed advertising, handbills, placards, posters and broadcast or telecast advertisements shall bear or make reference to the name of the individual, corporation or trade union sponsoring the political advertising.

Definition

(6) In this section, “political advertisement” and “political advertising” mean any matter promoting or opposing the election of any registered candidate for which a fee is paid, but does not include any news reporting done in good faith.

Definition

**153.**—(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held.

Restriction  
on fund  
raising

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period.

Income to be  
reported to  
Commission

(3) The gross income from any fund-raising function shall be recorded and reported to the Commission by the chief financial officer of the registered candidate who held the function or on whose behalf the function was held.

Sale of  
tickets, etc.

(4) Where a charge by the sale of tickets or otherwise is made for a fund-raising function, all or any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate by whom or on whose behalf the function was held, be considered not to be a contribution for the purposes of this Part.

Excess  
payments  
considered  
contributions

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of the highest amount charged, at or about the time the goods or services are provided, by any other person providing similar goods on a commercial basis in the same market area shall be considered a contribution.

Collections at  
meeting

**154.**—(1) Where, at a meeting held on behalf of a registered candidate, money is given in response to a general collection of money solicited, no amount shall be given anonymously by any person in excess of \$10.

Idem,  
reporting  
of amount

(2) The amounts given under subsection (1) shall be considered not to be contributions but the gross amount collected



shall be recorded and reported to the Commission by the chief financial officer.

**155.**—(1) Every registered candidate shall issue or cause to be issued receipts in the form prescribed by the Commission for every contribution accepted. Receipts to be issued for contributions

(2) A receipt prescribed by the Commission under subsection (1) shall provide, on its face, for the acknowledgment of the contribution accepted by or on behalf of the registered candidate and, on its back, for an application to the clerk of the municipality who was responsible for conducting the election for a tax credit that the contributor is eligible to receive under this Part on account of the contribution. Form of receipt

**156.**—(1) Any contribution to a registered candidate made through any unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution. Group contributions to be recorded as to source

(2) The amounts making up a contribution under subsection (1) that are attributable to any individual, corporation or trade union are contributions of that individual, corporation or trade union. Idem

**157.** No registered candidate and no individual, corporation or trade union on behalf of the candidate shall solicit or accept any contributions in excess of the limits imposed by this Part. Prohibition

**158.** No registered candidate shall directly or indirectly solicit or accept contributions from, Restriction on contributions

- (a) any individual normally resident outside Ontario;
- (b) any corporation that does not carry on business in Ontario; or
- (c) a trade union other than a trade union as defined in this Part.

**159.** Contributions of not more than 15 cents per month by any member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of this Part, but any amounts contributed to a registered candidate from these funds shall be considered to be a contribution from the trade union. Contributions by payroll deduction



Contributions  
not to be  
accepted by  
candidate  
directly

**160.** No contribution shall be accepted by a registered candidate except through the chief financial officer or other person on record with the Commission as authorized to accept contributions.

Record of  
contributions  
to be kept

**161.** Every registered candidate shall keep a record of all contributions in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contributions from a single source that in the aggregate exceed \$100, the name and address of the contributor.

#### BORROWING

Borrowing

**162.—**(1) A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the candidate and reported to the Commission.

Limitation

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1).

#### LOAN GUARANTEE

Guarantee  
of loans to  
registered  
candidates  
prohibited

**163.—**(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate.

Exception

(2) An individual, corporation or trade union that is eligible to make a contribution under this Part may guarantee any loan referred to in subsection 162 (1).

When loan  
considered  
contribution

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 162 (1) shall not be considered to be a contribution for the purposes of this Part, but if the guarantor forgives or waives all or any part of the borrower's indebtedness that has been guaranteed, the amount so forgiven or waived shall be considered to be a contribution for the purposes of this Part and may be forgiven or waived only to the extent permitted under section 148.

#### CAMPAIGN ADVERTISING

Restriction  
on  
advertising

**164.—**(1) No registered candidate and no individual, corporation or trade union acting with the candidate's knowledge

and consent shall, except during the period of twenty-eight days immediately preceding the day before polling day,

- (a) advertise on the facilities of any broadcasting undertaking; or
- (b) procure for publication, cause to be published or consent to the publication of an advertisement in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities,

for the purposes of promoting or opposing the election of a registered candidate.

(2) No individual or corporation shall, during the period prescribed in subsection (1), broadcast on the facilities of any broadcasting undertaking or publish in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities an advertisement promoting or opposing the election of a registered candidate on behalf of any registered candidate or any individual, corporation or trade union acting with the candidate's knowledge or consent. Idem

(3) Subsections (1) and (2) do not apply to,

Exemptions

- (a) advertising public meetings in the municipality or the jurisdiction of the school board or local board, as the case may be;
- (b) announcing the location of the campaign headquarters of a candidate;
- (c) advertising for volunteer campaign workers;
- (d) announcing services for electors by candidates respecting the revision of the preliminary list and additions to the polling list;
- (e) announcing services for electors on polling day; or
- (f) any other matter respecting administrative functions of a candidate's campaign headquarters,

if the advertisements, announcements and other matters are done in accordance with the guidelines of the Commission.

(4) Nothing contained in subsection (1) prohibits news reporting done in good faith during the period referred to in Idem

subsection (1) or the procuring for publication or the publishing of,

- (a) an advertisement referred to in subsection (1) on the day immediately preceding polling day in a newspaper which is published in the municipality or in the jurisdiction of the school board or local board, as the case may be, not more frequently than once a week if the day of regular publication falls on the day immediately preceding polling day; or
- (b) an advertisement referred to in subsection (1) on the day immediately preceding polling day and on polling day through the use of any outdoor advertising facility.

Idem,  
broadcasting  
R.S.C. 1970,  
c. B-11

(5) Nothing in subsection (1) prohibits the broadcasting on the facilities of a broadcasting undertaking of news reporting done in good faith in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines published thereunder during the period referred to in subsection (1).

Limitations  
on charges  
for  
broadcasting,  
publishing

(6) No individual or corporation shall,

- (a) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for broadcasting time on any broadcasting undertaking in the period beginning on the twenty-eighth day before the day immediately before polling day at an election and ending on the second day before polling day, that exceeds the lowest rate charged by the individual or corporation for an equal amount of equivalent time on the same facilities made available to any other person in that period; or
- (b) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for an advertisement in a periodical publication published or distributed and made public in the period referred to in clause (a) that exceeds the lowest rate charged by the individual or corporation for an equivalent amount of advertising space in the same issue of the periodical or in any issue published or distributed and made public in that period.

#### CAMPAIGN EXPENSES

Authorized  
expenses

**165.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the chief

financial officer of the candidate by persons authorized by the chief financial officer.

(2) Every person authorized to incur a campaign expense by a chief financial officer under subsection (1) shall, upon request, show a certificate, in the form prescribed by the Commission, signed by the chief financial officer as proof of the authority.

Proof of  
authority

**166.**—(1) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation or trade union acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$5,500, plus \$0.50 per elector.

Limitation on  
campaign  
expenses,  
head of  
council

(2) Subject to subsection (3), the total campaign expenses incurred by a registered candidate in an election for the office of,

Idem,  
members of  
council, etc.

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality;
- (c) member of a school board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality; or
- (d) member of a local board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation or trade union acting on behalf of that candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$3,500, plus \$0.50 per elector.

(3) Where the municipality, school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of those wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Campaign  
expenses,  
ward system



Determina-  
tion of  
number  
of electors

(4) For the purposes of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

Duties  
of clerk

(5) After determining the number of electors under subsection (4), the clerk shall calculate, for each office, the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for an office under subsection (1) or (2), and certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or cause to be delivered personally or send or cause to be sent by registered mail a copy of the certificate to each registered candidate for the office and to the Commission.

Clerk's  
certificate  
conclusive

(6) Certification of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office by the clerk under subsection (5) is conclusive evidence of the fact.

Submission  
of payment  
claims

**167.**—(1) Every individual who or corporation or trade union which has any claim for payment in relation to a campaign expense shall submit the claim within three months after polling day to the chief financial officer of the registered candidate who incurred the expense.

Payment  
of claims

(2) Every payment of a campaign expense shall be made by the chief financial officer of the registered candidate who incurred the campaign expense and, except where the campaign expense is less than \$25, the chief financial officer shall set out the particulars of payment.

Disputed  
claims

(3) Where the chief financial officer of a registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

#### AUDITORS

Appointment  
of auditor

R.S.O. 1980,  
c. 405

**168.**—(1) Every candidate, at the time of appointing a chief financial officer, shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor.

Change of  
auditors

(2) If an auditor appointed under subsection (1) ceases to hold office, ceases to be qualified under subsection (1) or becomes ineligible under subsection (3), the candidate shall immediately appoint another auditor licensed under the



*Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor. R.S.O. 1980, c. 405

(3) No election official and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the registered candidate. Persons not eligible to be auditors

(4) The auditor shall make a report to the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 169, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards. Report of auditor

(5) If, Idem

- (a) the auditor has not received from the chief financial officer all the information and explanation that is required; or
- (b) proper accounting records have not been kept by the chief financial officer so far as appears from the auditor's examination,

the auditor shall make a statement to that effect in the report made under subsection (4).

(6) An auditor shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate. Right of access

(7) The chief financial officer of the candidate shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (4). Co-operation required

#### FINANCIAL STATEMENTS

**169.**—(1) The chief financial officer of every registered candidate shall, within six months after polling day, file with the Commission, Filing of financial statements with Commission

- (a) a financial statement setting out,
  - (i) all income received and expenses incurred in the campaign period,

(ii) all campaign expenses, paid and outstanding, incurred in a campaign period and a statement of all disputed claims, and

(iii) all information required to be recorded under section 161 that relates to the campaign period; and

(b) the auditor's report on the financial statement.

Filing of  
financial  
statements  
with clerk of  
municipality

(2) The chief financial officer shall, within six months after polling day, file a copy of the financial statement and the auditor's report referred to under subsection (1) with the clerk of the municipality who was responsible for the conduct of the election for which the registered candidate was registered.

Commission  
to prepare  
statement

(3) After the time for the filing of a financial statement and auditor's report has expired, the Commission shall immediately prepare a statement disclosing,

(a) the information received under this section; and

(b) the name of the registered candidate, if any, who failed to file a statement or report under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Demand to  
candidate to  
file

(4) After the time for the filing of the financial statement and auditor's report has expired, the Commission shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement and report, a notice in the form prescribed by the Commission demanding that the registered candidate file a financial statement and auditor's report within thirty days from the date of the notice.

Contents of  
demand  
notice

(5) The notice under subsection (4) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not, is ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the financial statement and auditor's report within thirty days of the date of the notice.

Publication  
of notice

(6) The Commission shall publish the notice under subsection (4) in a newspaper having general circulation in the municipality.

(7) After the thirty day period for the filing of a statement and report has expired, the Commission shall immediately prepare a supplementary statement disclosing,

Commission to prepare supplementary statement

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a financial statement and auditor's report within the thirty day period allowed under subsection (4),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

SURPLUS

**170.**—(1) Where the financial statement of a registered candidate filed under section 169 shows a surplus, the surplus shall be immediately paid over to the clerk who was responsible for the conduct of the election who shall hold it in trust for the registered candidate for use in whole or in part by the registered candidate in the next general election.

Surplus funds

(2) The clerk shall not release the surplus held in trust for a candidate under subsection (1) to the candidate for use in whole or in part in the next regular election until the clerk has been notified by the Commission under section 143 that the candidate has become registered under this Part for that election.

Release of funds, regular elections

(3) Where the candidate for whose benefit the surplus is held in trust under subsection (1) becomes registered under this Part for a new election that precedes the next regular election, the clerk, upon being so notified by the Commission, shall release the surplus to the candidate for use in whole or in part in that new election.

Idem, new elections

(4) No surplus shall be released under subsection (2) or (3) to the registered candidate for whose benefit it is held in trust under subsection (1) where the office for which the candidate has been, or will be, nominated in the election is not on the same council, school board or local board, as the case may be, as the office in respect of which the surplus was produced.

Restriction

(5) Where the candidate for whose benefit the surplus is held in trust under subsection (1),

Disposal of surplus

- (a) notifies the clerk in writing that the candidate does not intend to seek nomination;

- (b) fails to be nominated;
- (c) is ineligible to be nominated; or
- (d) fails to become registered,

in the next regular election, the surplus shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Idem

(6) Upon the repeal of any by-law passed under section 139 or any resolution passed under section 140 or 141, any surplus held by the clerk under this section shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Ineligibility  
respecting  
future  
elections

**171.—**(1) If a registered candidate,

- (a) fails to file a financial statement and auditor's report within thirty days of the date of the notice sent under subsection 169 (4);
- (b) files a financial statement and auditor's report that is either incorrect or does not comply with section 169 and fails to file a correction statement and report within thirty days from the date that the Commission files the statement under subsection 169 (4); or
- (c) incurs campaign expenses in excess of the amount permitted under section 166,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

Forfeiture  
of office

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has exceeded the amount referred to in clause (1) (c), the Commission shall immediately notify in writing the registered candidate and the council, school board or local board, as the case may be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

Ineligibility  
respecting  
future  
elections

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has



forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

**172.**—(1) Where the financial statement of a registered candidate who is not declared elected shows a surplus and the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170, the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless before that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility where surplus not paid to clerk

(2) Where,

Office declared vacant

- (a) a registered candidate is declared elected;
- (b) the financial statement of the candidate shows a surplus; and
- (c) the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170,

the Commission shall notify in writing the candidate and the council, school board or local board, as the case may be, to which the candidate was elected and the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under this Act.

(3) Where the office to which a registered candidate was declared elected is subsequently declared vacant under subsection (2), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless prior to that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility respecting future elections

TAX CREDIT

**173.**—(1) Every individual who and every corporation or trade union which made a contribution to a candidate registered under this Part during the campaign period of an election may within one year of polling day apply, in the form prescribed by the Commission, to the clerk of the municipality

Tax credit



who was responsible for conducting the election to receive a tax credit.

Amount of  
tax credit

(2) The tax credit which a contributor is eligible to receive under subsection (1) is an amount equal to,

- (a) 75 per cent of the total amount contributed by the contributor to all candidates if the amount contributed does not exceed \$100;
- (b) \$75 plus 50 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$100 and does not exceed \$400; or
- (c) the lesser of,
  - (i) \$225 plus 33 1/3 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$400 if the total amount contributed exceeds \$400, and
  - (ii) \$350,

if payment of each amount that is included in the total amount contributed by the contributor to all registered candidates is proven by receipts in the form prescribed by the Commission that are signed by a recorded agent of the candidate.

Reduction of  
tax credits

(3) A tax credit under subsection (2),

- (a) shall first be applied by the clerk to reduce any arrears in taxes or other debts then owing to the municipality by the contributor; and
- (b) may be applied to offset current taxes, at the request of the contributor.

Payment of  
rebates

(4) Where the contributor does not owe any taxes or other debts to the municipality or does not make the request under clause (3) (b), the clerk shall pay to the contributor an amount equal to the amount of the tax credit which the contributor is eligible to receive under subsection (2).

Recovery of  
tax credit

(5) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in an election for the office of chairman or member of the council of a regional or metropolitan municipality, the clerk shall recover the amount of the tax credit pro-

vided to any contributor under subsection (3) or (4) from the regional or metropolitan municipality by billing the regional or metropolitan municipality for that amount.

(6) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a school board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the school board by deducting that amount from any funds that the municipality is required to pay over to the school board.

Recovery of  
tax credit  
from school  
board

(7) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a local board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the local board by billing the local board for that amount.

Recovery of  
tax credit  
from local  
board

(8) No tax credit shall be provided to a contributor under subsection (3) or (4) until the Commission has notified the clerk in writing that all of the financial statements and auditor's reports filed with it by the chief financial officers of the registered candidates in the election as required by section 169 have been examined.

Condition for  
giving tax  
credits

(9) Tax credits shall be issued to contributors only during the one-year period following receipt of the notice given by the Commission under subsection (8).

Time  
restriction

(10) No tax credit shall be provided to a contributor under subsection (3) or (4) for a contribution to a registered candidate where the chief financial officer of the candidate has failed to file the financial statement and auditor's report required by section 169 or where the financial statement and auditor's report of the candidate have been found by the Commission to be unsatisfactory.

Refusal of  
tax credit

(11) In this section, "tax credit" includes a rebate of contributions.

Interpretation

#### ACCESS TO DOCUMENTS

**174.**—(1) Documents filed with the Commission or the clerk of a municipality under this Part are public records and may be inspected by any person upon request at the office of the Commission or of the clerk during normal office hours.

Inspection of  
documents

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the

Extracts and  
copies

documents upon payment for the preparation of the copies at such rate as the Commission may determine or at such rate as the clerk charges for the preparation of copies of other documents.

Not to be  
used for  
commercial  
solicitation

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the Commission or the clerk under this Part for the purpose of commercial solicitation.

#### FORMS

Form

**175.** All applications, returns, statements and other documents to be filed with the Commission shall be filed in the form prescribed by the Commission.

#### POWERS AND DUTIES OF COMMISSION

Powers and  
duties of  
Commission  
1986, c. 33

**176.** Except as otherwise provided in this Part, the provisions of the *Election Finances Act, 1986* relating to the powers and duties of the Commission apply with necessary modifications to the Commission in the administration of this Part.

#### OFFENCES

Offence,  
chief  
financial  
officer

**177.—**(1) The chief financial officer of a registered candidate who contravenes section 169 is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Idem,  
candidate

(2) Where any contravention of this Part that is an offence by virtue of subsection (1) is committed by a chief financial officer of a registered candidate, the candidate for which the chief financial officer acts is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
candidate

**178.** Where the total campaign expenses incurred by a registered candidate and any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 166 for the office subject to election, the registered candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 166.

Offence,  
candidate

**179.** Where the financial statement of a registered candidate shows a surplus and the surplus is not paid over to the clerk as required by section 170, the candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount of the surplus.

**180.** Every corporation or trade union that contravenes any of sections 143 to 174 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offence,  
corporations,  
trade union

**181.** Every individual who contravenes any of sections 143 to 174, except subsection 148 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
individuals

**182.** No person shall obstruct a person making an investigation or examination under this Part or withhold, conceal or destroy or alter any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

Obstruction  
prohibited

**183.** No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the Commission under this Part.

Prohibition,  
false  
statements

**184.** No person shall knowingly give false information to a chief financial officer or other person authorized to accept contributions.

Prohibition,  
false  
information

**185.—(1)** A prosecution for an offence under this Part may be instituted against a trade union in the name of the trade union and, for the purposes of any prosecution, the trade union shall be deemed to be a person.

Prosecution  
of trade  
unions

**(2)** Any act or thing done or omitted by an officer or agent of a trade union within the scope of the officer's or agent's authority on behalf of the trade union shall be deemed to be an act or thing done or omitted by the trade union.

Trade union  
liable for acts  
of agents

**186.** No prosecution shall be instituted under this Part without the consent of the Commission and no prosecution shall be instituted more than one year after the facts upon which the prosecution is based first came to the knowledge of the Commission.

Consent of  
Commission

**14.** Section 37 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by inserting after "qualified" in the first line "to be elected or".

**15.** Section 38 of the said Act is amended by adding thereto the following subsection:

**(1a)** A member of council who ceases to hold the qualifications required under clause 37 (a) is disqualified from holding the office of member of council.

Member to  
maintain  
eligibility

**16.—(1)** A notice of registration filed under section 122 of the *Municipal Elections Act*, as enacted by section 13 of this

Transition



Act, within sixty days of the coming into force of this Act, shall be deemed to have been filed on the 1st day of January, 1988.

Idem

(2) For the purpose of the 1988 regular elections, a municipality, school board or local board may pass a by-law or resolution to have Part III apply to the election if the by-law or resolution is passed within sixty days after the coming into force of this Act.

Commence-  
ment

**17.—**(1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Idem,  
transitional

(2) Sections 11, 12 and 13 shall be deemed to have come into force on the 1st day of January, 1988, and apply to contributions made and campaign expenses incurred on and after that date.

Idem

(3) Sections 3 and 5 come into force on the 1st day of January, 1991.

Short title

**18.** The short title of this Act is the *Municipal Elections Statute Law Amendment Act, 1988*.







# Bill 106

## An Act to amend the Municipal Elections Act and the Municipal Act

The Hon. J. Eakins  
*Minister of Municipal Affairs*



*1st Reading*      April 5th, 1988  
*2nd Reading*     May 4th, 1988  
*3rd Reading*  
*Royal Assent*

*(Reprinted as amended by the General Government Committee)*

## EXPLANATORY NOTES

The purpose of the Bill is to provide for limits on campaign contributions and expenses and for their disclosure to the voters after the election. There is provision for an optional tax credit system. The Bill also amends the recount process to provide for a recount by a recount officer, rather than by a judge, who will generally be the clerk, unless another person is appointed by the clerk.

The Bill also contains amendments designed to increase the accessibility to voting by doubling the number of mandatory advance polls, standardizing voting hours and proxy voting and also making the polls more accessible to disabled and physically challenged voters. The Bill will require candidates, once elected, to maintain the qualifications for their candidacy during the term of office.

The principal provisions of the Bill are as follows:

### *Municipal Elections Act*

**SECTION 1.** The proposed section 14a clarifies that a corporation is not eligible to vote in an election.

**SECTION 2.** A candidate would have to be registered before being entitled to copies of the preliminary list of voters.

**SECTIONS 3, 6 (3).** All advance polls are to be accessible to disabled persons and persons having a mobility impairment for the 1988 election and all polls are to be accessible to such voters for the 1991 election.

**SECTIONS 4, 6 (2).** The voting hours for both regular and advance polls are to be 10 a.m. to 8 p.m.

**SECTION 5.—Subsection 1.** Subsection 66 (1) is amended to provide for a second mandatory advance poll to be held on the Thursday before polling day.

**SECTION 6.** Subsection 67 (1) is re-enacted to allow any elector to vote by proxy so that it is no longer necessary to show physical incapacity or absence from one's regular residence to attend school.

**SECTIONS 7, 8 and 9.** The existing recount process would be replaced in the new sections 83 to 88j. The essential features are as follows:

1. The municipal clerk is the recount officer, unless the clerk appoints another person prior to polling day or the clerk has participated in the counting of the ballots or is unable to conduct the recount.
2. A recount is automatic if the vote spread between the winner and the runner-up is less than .5 for each poll or less than ten votes, whichever is greater, and is requested by a candidate within seven days from the date of the results. A recount continues to be held in the case of a tied vote.
3. Recounts may, as at present, be requested by the council, school board or local board within thirty days of the declaration of results.
4. Any elector who has reasonable grounds may apply for a recount to a judge and the judge shall determine whether one is to be held by the recount officer. The application to the judge is to be commenced no later than thirty days after the declaration of results.
5. The municipality, school board or local board involved shall pay the cost of a recount including reasonable remuneration for and the expenses of persons appointed as assistant recount officers and other assistants, except where the

recount was held at the request of a candidate for election to a school board or local board or at the request of such board in which case the board is to pay the remuneration and expenses.

**SECTIONS 10, 11 and 12.** Section 121 which enabled council to pass a by-law regulating election contributions and expenses and requiring their reporting is repealed and replaced by a mandatory system set out in Part II, which provides for the following:

1. There is a limit of \$750 per individual contribution.
2. Limits are placed on expenses based on a formula relating to the number of electors at \$5,500 for each council head and \$3,500 for candidates for other offices plus 50 cents per elector in each ward, municipality, local board or school jurisdiction.
3. A person is required to register by filing a notice with the clerk no earlier than the 1st day of January in an election year and no later than nomination day. Contributions cannot be accepted unless a person is a registered candidate.
4. Contributions can only be made during the campaign period defined to commence on the 1st day of January of an election year and ending on March 31st in the year following an election year.
5. A registered candidate may appoint a chief financial officer.
6. A fund-raising function can only be held during the campaign period.
7. A candidate will be required to file with the clerk no later than the 30th day of June in the year following the election year a statement of expenses and contributions the nature of which will be determined by the amount of the expenses and contributions.
8. The clerk must submit a statement to the council or board showing the information received from candidates and the names of any candidates who have failed to file.
9. If a registered candidate fails to make the required disclosure within thirty days of a written demand or fails to correct an incorrect statement within thirty days or where the candidate's campaign expenses exceed the statutory limits, that candidate is ineligible to hold elected office up to and including the next regular election.
10. If an elected candidate fails to make the required disclosure within the thirty day demand period or has exceeded the statutory limits, the clerk is to notify the candidate and the council or board to which the candidate was elected. The office then becomes vacant and the former elected candidate is ineligible to hold elected office up to and including the next regular election.
11. In addition to the above penalties, a corporation or trade union may be fined up to \$10,000 for a contravention of sections 122 to 134 and an individual may be fined up to \$1,000 for a contravention of sections 122 to 134, excluding sub-section 124 (7).

A council, school board or local board has the option of adopting the proposed Part III so that contributors can obtain tax credits which are payable by the jurisdiction involved. Part III establishes identical limits on contributions and expenses with similar disclosure requirements to those contained in Part II as well as identical penalties as to ineligibility and disqualification.

The essential differences between Parts II and III of the Bill are that Part III provides for the following:



1. A candidate must register with the Commission on Election Finances established under the *Election Finances Act, 1986* which administers this Part.
2. The candidate must appoint a chief financial officer.
3. The candidate must also appoint an auditor whose duties are set out with respect to the financial statements that are to be filed by the chief financial officer.
4. Political advertising paid by others and costing in excess of \$100 is considered a contribution and, if done during the campaign period, a campaign expense.
5. Media campaign advertising is restricted to the twenty-eight day period before polling day.
6. The chief financial officer of every candidate is required to file with the Commission, no later than the 30th day of June in the year following an election year, an audited statement of expenses and contributions.
7. The Commission performs the same functions as the clerk under Part II in regard to candidates who fail to comply with the disclosure requirements.
8. A candidate is to turn any surplus over to the clerk who is to hold it in trust for the candidate in the next election. If the candidate decides not to seek nomination in the next election, the surplus is to be paid into the general fund of the municipality or board. Failure to turn over the surplus renders the candidate ineligible to be nominated at the next election, unless in the meantime the surplus is paid over. In the case of an elected candidate, the office is declared vacant.
9. Every contributor is to receive a tax credit or rebate from the municipality based on the following:

<i>Contribution</i>	<i>Tax Credit or Rebate</i>
Up to \$100	75% of contribution
\$100 to \$400	\$75 plus 50% of excess over \$100
Over \$400	the lesser of,
	(a) \$225 plus 33.33% of excess over \$400 or,
	(b) \$350

10. No tax credits or rebates are to be provided until the Commission has notified the clerk that all the required statements have been filed.

### *Municipal Act*

**SECTIONS 13 and 14.** Sections 37 and 38 of the *Municipal Act* are amended to clarify that a person must hold the qualifications for office to be elected and must continue to hold the qualifications during the term of office.

# Bill 106

1988

## An Act to amend the Municipal Elections Act and the Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

**14a.** No corporation is eligible to vote in any election.

Corporation  
not eligible  
to vote

**2.** Subsection 25 (6) of the said Act is repealed and the following substituted therefor:

(6) Every registered candidate, as defined in section 121 or section 138, is entitled to be furnished by the clerk with two copies of the preliminary list of electors entitled to vote in an election.

Registered  
candidate  
entitled to  
copies

**3.** Subsection 46 (1) of the said Act is amended by inserting after “electors” in the fourth line “allows easy access to persons who have a physical disability or a mobility impairment”.

**4.** Section 52 of the said Act is amended by striking out “11” in the second line and inserting in lieu thereof “10”.

**5.—(1)** Subsection 66 (1) of the said Act is amended by inserting after “day” in the third line “and on the Thursday immediately before polling day”.

(2) Subsection 66 (3) of the said Act is amended by striking out “9” in the first line and inserting in lieu thereof “10”.

(3) Subsection 66 (4) of the said Act is amended by inserting after “necessary” in the second line “shall select locations that allow easy access to persons who have a physical disability or a mobility impairment”.

**6.** Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1985, chapter 4, section 9, is repealed and the following substituted therefor:

Who may  
vote by  
proxy

(1) Any person whose name is entered in the polling list for a polling subdivision or who has obtained a certificate under section 33 may vote by proxy in the polling subdivision.

**7.** Section 82 of the said Act is repealed.

**8.** Section 83 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 37, section 14, is repealed and the following substituted therefor:

#### RECOUNTS

Recount  
officer

**83.**—(1) The clerk of every municipality, at the same time as the clerk appoints officials under section 4, may appoint a person as recount officer.

Disqualifi-  
cation

(2) No person who is a candidate or who is less than eighteen years of age shall be appointed a recount officer.

Oath

(3) A recount officer shall, before performing any duties, take the oath in the prescribed form.

**9.** Sections 84, 85, 86, 87 and 88 of the said Act are repealed and the following substituted therefor:

Clerk as  
recount  
officer

**84.**—(1) If a recount officer is not appointed under subsection 83 (1), subject to subsections (2) to (5), the clerk of a municipality is the recount officer for elections within the municipality or any part of it.

Recount  
officer,  
regional  
chairman

(2) The clerk of the area municipality with the greatest number of electors is the recount officer for the election of the chairman of a regional municipality.

Recount  
officer, police  
village

(3) The clerk of the municipality in which a police village is located is the recount officer for the election of the trustees of the police village.

Idem

(4) If the police village is located in two or more municipalities, the clerk of the municipality having the largest number of electors in the police village is the recount officer for the election of the trustees.

Recount  
officer,  
school  
trustees  
R.S.O. 1980,  
c. 129

(5) The returning officers of municipalities that hold elections for school trustees under the *Education Act* are recount officers for the election of the school trustees.

(6) Where the recount officer of a municipality has participated in the actual counting of the ballots for a polling subdivision in an election or, for any reason, is unable to conduct a recount arising as a result of the election, the recount officer shall immediately appoint a person to act as the recount officer for that election who is not disqualified under subsection 83 (2). Recount officer replacement

(7) A person need not be appointed under subsection (6) if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the recount officer participated in the actual counting of the ballots. Exception

**85.—**(1) The recount officer is responsible for the proper preparation for and conduct of a recount in the election and, for this purpose, shall direct the training of persons appointed under this section and supervise their work. Duty of recount officer

(2) The recount officer may appoint assistant recount officers and may provide for such clerical and other assistance as is necessary to conduct a recount. Assistants

(3) No person shall be appointed under this section who, Disqualification

(a) is a candidate;

(b) is less than eighteen years of age; or

(c) has participated in the actual counting of the ballots for a polling subdivision in the election.

(4) Clause (3) (c) does not apply if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the person who is to be appointed an assistant recount officer participated in the actual counting of the ballots. Exception

(5) The recount officer may in writing delegate to the assistant recount officers such rights and duties in relation to the preparation for and conduct of a recount as the recount officer considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the recount officer. Delegation by recount officer

(6) The recount officer may appoint persons to aid in maintaining peace and order at the recount. Other appointments

(7) Every recount officer, assistant recount officer, scrutineer and any other person authorized to attend and serve at a Oath



recount shall, before performing any duties, take the oath in the prescribed form.


Who may  
administer  
oaths

(8) The recount officer may administer any oath required in relation to a recount, and assistant recount officers may administer any such oath except an oath to be taken by the recount officer.

Remuner-  
ation and  
expenses

(9) The municipality shall pay to persons appointed under this section reasonable remuneration and the expenses incurred in attending the recount, but if the recount has been held at the request of a school board or a local board or at the request of a candidate for election to a school board or local board, the school board or local board, as the case may be, shall pay the remuneration and expenses.

Certification  
of expenses

(10) The expenses under subsection (9) shall be paid out only upon presentation of a certificate signed by the clerk of the municipality verifying the amount payable. 

Tie votes,  
recount

**86.—(1) If,**

- (a) two or more candidates nominated for the same office have an equal number of votes and both or all of the candidates cannot be declared elected to the office; or
- (b) the votes for the affirmative and negative on a by-law or question are equal,

the recount officer shall, after the tied vote has been publicly announced, immediately appoint a time and place to hold a recount of the votes cast for those candidates or on the by-law or question.

When  
recount to  
be held

(2) The time appointed by the recount officer for a recount under subsection (1) shall be no later than seven days after the declaration of the results of the election under subsection 79 (2) or 79 (3).

Where vote  
is close

**86a.—(1)** If the number of votes separating a candidate who was not declared elected and a candidate who was declared elected or, for an office to which more than one person may be elected, who was declared elected with the least number of votes, is less than one half of one vote for each polling subdivision in the election for that office, or less than ten votes, whichever is greater, the results shall be included in the statement required under subsection 79 (2) or 79 (3).



(2) If subsection (1) applies and if a candidate who was not declared elected so requests in writing, the recount officer shall hold a recount. Recount on request

(3) A request for a recount under subsection (2) shall be made to the recount officer not later than seven days after the declaration of the results of the election under subsection 79 (2) or 79 (3). When request for recount to be made

(4) Upon receiving a request for a recount under this section, the recount officer shall appoint a time and place for the recount. Time and place for recount

(5) The time appointed by the recount officer for a recount under subsection (4) shall be no earlier than ten days and no later than twenty days after the request for the recount is received. When recount to be held

➡ **86b.**—(1) Following an election for the members of the council of a municipality, regional municipality or metropolitan municipality or of a school board or of a local board, where a recount of the votes for the office or for the affirmative or negative on any by-law or question is considered to be in the public interest, the council, school board or local board, as the case may be, may pass a resolution requiring the recount officer to hold a recount. Recount resolution ⬆

(2) A resolution for a recount under subsection (1) shall be passed no later than thirty days after the declaration of the results of the election under subsection 79 (2) or 79 (3). When resolution to be passed

(3) If a resolution for a recount is passed under subsection (1) within the time period set out in subsection (2), the recount officer shall appoint a time and place for the recount. Time and place for recount

(4) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days after the passing of the resolution under subsection (1). When recount to be held

**87.**—(1) If, in any election, an elector has reasonable grounds for believing that, Application for recount by elector

- (a) the votes have been improperly counted or any ballot has been improperly rejected;
- (b) an incorrect statement of the number of votes for any candidate or for or against any by-law or question has been made; or
- (c) the votes have been improperly added up,

the elector may apply to a judge of the District Court of the county or district in which the municipality or part thereof or the administrative or head office of the school board or local board is situate for a determination whether a recount should be held.

Affidavit and  
deposit to  
accompany  
application

(2) An application for a recount under subsection (1) shall be commenced no later than thirty days after the declaration of the results of the election under subsection 79 (2) or 79 (3) and shall be accompanied by,

- (a) an affidavit or affidavits setting out the grounds for the recount and the facts in support of those grounds; and
- (b) a deposit in the sum of \$100 as security for the costs in connection with the application.

Contents of  
affidavit

(3) An affidavit under clause (2) (a) shall be confined to facts within the personal knowledge of the person making the affidavit or to other evidence that this person could give if testifying as a witness in court.

Form of  
deposit

(4) A deposit under clause (2) (b) shall be in the form of cash or in the form of a money order or certified cheque made payable to the local registrar of the District Court, or in any combination thereof.

Parties to  
be served

(5) Copies of the notice of application, the application for a recount and affidavits in support of the application shall be served by the applicant,

- (a) where the application concerns an election to office, upon each candidate for that office; and
- (b) upon the recount officer.

Disposition  
of  
application,  
etc.

(6) The judge, if satisfied that there are sufficient grounds for a recount, shall order that a recount be held by the recount officer and may determine which ballot boxes, if any, shall be opened for the purpose of the recount.

Where  
recount  
ordered

(7) If the judge has ordered a recount, the judge shall immediately notify the recount officer in writing and the recount officer shall appoint a time and place to hold the recount.

When  
recount to  
be held

(8) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days

following the date the recount officer receives the notice from the judge.

(9) The costs with respect to a recount conducted under this section are in the discretion of the judge ordering the recount who may order by whom, to whom and in what manner the costs shall be paid.

Costs

**88.—**(1) The recount officer shall give at least six days notice in writing of the time and place of the recount to,

Notice of  
recount

- (a) the candidate who requested the recount, the council or school board or local board which passed the resolution for the recount, or the elector who applied to the judge for the recount, as the case may be;
- (b) the candidates for the office which is the subject of the recount;
- (c) if the recount officer is not the returning officer of the municipality, the returning officer of the municipality; and
- (d) if the recount concerns the election of chairman of a regional municipality, the trustees of a police village or the members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality.

(2) The recount officer shall attend the recount and bring the ballot boxes and all documents relating to the election.

Attendance  
of recount  
officer

(3) If the recount officer is not the returning officer of the municipality, the returning officer of the municipality, or a person appointed by the returning officer, shall attend the recount and bring the ballot boxes and all documents relating to the election.

Where  
recount  
officer not  
returning  
officer

(4) If the recount concerns the election of chairman of a regional municipality or of trustees of a police village or of members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality, or a person appointed by the clerk, shall attend the recount and bring the ballot boxes and all documents relating to the election.

Regional  
chairman,  
police village  
and school  
board  
elections

(5) Each candidate for an office to which the recount relates and the elector, if any, who applied for the recount are entitled to be present and to be represented by counsel and to

Who may be  
present

have present a scrutineer appointed for that purpose, and, where the recount relates to a by-law or question, such persons as the council may appoint as scrutineers are entitled to be present, but no other person, except with the permission of the recount officer, is entitled to be present at the recount.

Application  
of certain  
provisions

(6) Subsections 4 (8) and (10) and sections 6 and 7 apply with necessary modifications to scrutineers appointed under subsection (5).

What ballots  
involved in  
recounts

**88a.**—(1) If a recount relates to the election of a candidate, the recount shall be of the votes cast,

- (a) where subsection 86 (1) applies, for the two or more candidates who have an equal number of votes;
- (b) where subsection 86a (1) applies, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected and for the defeated candidate or candidates who received enough votes for the same office to fall within the margin of votes prescribed by that subsection; and
- (c) in all other cases, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected by the returning officer and for the defeated candidate who received the highest number of votes for the same office.

Recount of  
votes cast  
for other  
candidates

(2) Notwithstanding subsection (1), the recount officer may conduct a recount of the votes cast for any other candidate whose election or right to any other office may be affected by the recount conducted under subsection (1).

Procedure at  
recount

**88b.**—(1) At the time and place appointed for the recount, and in the presence of those persons who are entitled to be present and who have attended, the recount officer shall add the votes from the statements returned to the returning officer by the deputy returning officers, or shall count the ballots received by the returning officer from the deputy returning officers and the number of votes counted at the election, or both, as the recount officer considers appropriate, and for this purpose shall open the sealed envelopes containing,



- (a) the ballots that were not objected to and were counted;
- (b) the ballots that were objected to but were counted;
- (c) the rejected ballots;
- (d) the cancelled ballots;
- (e) the ballots that were used but were unmarked;
- (f) the declined ballots; and
- (g) the unused ballots.

(2) Subject to sections 88c and 88d, the recount officer, in conducting the recount, shall determine the validity of ballots, and shall verify or correct the statement of the vote for each polling subdivision. Verification of statement of the vote

**88c.**—(1) A candidate, a representative of the candidate or a scrutineer who objects to the validity of a ballot or to the counting of votes in any ballot may request that the recount officer make an application to a judge of the District Court for an order determining the validity of the ballot. Application to judge

➡ (2) If the recount officer fails to make an application within five days of a request being made under subsection (1), the party making the request may apply directly to a judge of the District Court. Direct application ⬆

(3) No hearing under subsection (1) shall be held until the recount officer has complied with subsection 88b (2). When hearing to be held

(4) If an application is made under subsection (1), the recount officer shall, Procedure where application made

- (a) write the number of the polling subdivision on the back of and initial any disputed ballots that are the subject of the application and seal them in a separate envelope clearly marked so as to indicate its contents;
- (b) give at least six days notice in writing of the time and place of the hearing of the application to the parties to the recount; and
- (c) make suitable arrangements for the safekeeping of any ballots that are not the subject of the appli-



cation and any documents relating to the election that are not relevant to the application.

Attendance  
of recount  
officer at  
hearing

(5) The recount officer shall attend the hearing of the application and bring the envelope containing the disputed ballots that are the subject of the application and any documents relating to the election that are relevant to the application.

Procedure  
at hearing

(6) The judge, in the presence of the persons entitled to be present at the recount and who have attended the hearing, shall determine the validity of the ballot or to the counting of votes in any ballot and for this purpose shall open the sealed envelope containing the disputed ballots.

Distin-  
guishing  
disputed  
ballots

(7) If a party to the application requests the judge to do so, the judge shall initial any ballots the validity of which, notwithstanding any order to the contrary made by the judge under this section, is disputed by the party and seal the disputed ballots in a separate envelope clearly marked so as to indicate its contents.

Procedure on  
completion  
of hearing

(8) Upon completion of the hearing, the judge shall make an order determining the validity of the ballot and shall,

- (a) advise the persons present of the order;
- (b) except as provided by subsection (7), seal the disputed ballots in their original envelope; and
- (c) return the envelope referred to in clause (b), along with any documents relating to the election that were examined during the course of the hearing, to the custody of the recount officer.

Judge to  
give order  
to recount  
officer

(9) The judge shall give a certified copy of the order to the recount officer unless, within five days following the hearing, the judge receives a notice of appeal under section 88j.

Recount  
officer to  
complete  
recount

(10) Upon receipt of the judge's order, the recount officer shall complete the recount.

Costs of  
application

(11) Subject to subsection (12), the costs of the application shall be borne by the municipality, school board or local board to which the recount relates.

Idem

(12) If the judge finds that any objection is frivolous or vexatious, the judge may order that the costs of the application be paid by the person who made the objection.

(13) Upon the expiry of the time for appeal from a decision of the judge, if no appeal has been taken, the judge shall return the envelope described in subsection (7) to the custody of the recount officer.

Where  
no appeal,  
envelope to  
be returned

**88d.** Notwithstanding section 88c, if a party to the recount requests the recount officer to do so, the recount officer shall write the number of the polling subdivision on the back of and initial any disputed ballots and seal them in a separate envelope clearly marked so as to indicate its contents.

Distin-  
guishing  
disputed  
ballots

**88e.**—(1) Upon completion of the recount, the recount officer shall,

Procedure on  
completion  
of recount

- (a) announce the result to the persons present at the recount; and
- (b) except as provided in section 88d, seal the ballots in their original envelopes and the original statements in a separate envelope clearly marked so as to indicate its contents.

(2) The recount officer shall certify in writing the result of the recount, unless, within five days following the completion of the recount, the recount officer receives a notice of appeal under section 88j.

Certification  
by recount  
officer

(3) Following certification of the result of the recount, the returning officer shall declare the candidate or candidates, as the case may be, having the greatest number of votes to be elected or certify to the council the result of the vote with respect to a by-law or question, as applicable.

Declaration  
of result by  
returning  
officer after  
recount, etc.

**88f.**—(1) In the case of a tied vote for candidates for any office for which one person only is to be elected, or for which the holding of any other office is to be determined as a result of a recount, the successful candidate shall be determined by lot conducted by the recount officer.

Tied votes

(2) The lot shall be conducted by placing the names of the candidates on equal size pieces of paper in a box, and the name drawn by the recount officer shall be the successful candidate.

Method of  
conducting  
lot

**88g.** The costs of the recount, unless otherwise ordered by a judge, shall be borne by the municipality, school board or local board to which the recount relates.

Costs of  
recount

**88h.**—(1) Upon the expiry of the time for appeal from a decision of the recount officer, if no appeal has been taken,

If no appeal,  
envelopes to  
be returned

the recount officer shall return the envelopes described in section 88d and clause 88e (1) (b) to the custody of the appropriate clerk or returning officer.

Documents  
not required  
on appeal

(2) If an appeal is taken from the decision of the recount officer on the recount, the recount officer shall return the envelopes of ballots and the original statements of the vote described in clause 88e (1) (b) that are not required for the appeal to the custody of the appropriate clerk or returning officer.

Right to sit  
pending  
recount

**88i.**—(1) A candidate declared elected is entitled to sit on the council, school board or local board notwithstanding that a request or application for a recount has been filed or a resolution for a recount has been passed, but where the recount determines that some other person was elected, that other person is, notwithstanding that an appeal is pending, entitled to sit and vote until the appeal is disposed of.

Decisions  
not affected

(2) A decision of a council, school board or local board reached with the participation of a member who is subsequently declared not to be entitled to sit on the council, school board or local board is not affected by that participation.

#### APPEAL FROM DECISION OF JUDGE OR RECOUNT OFFICER

Appeal from  
decision of  
judge or  
recount  
officer

**88j.**—(1) Any party may appeal to the Divisional Court from the decision of the judge on the application or of the recount officer on the recount, as the case may be, by giving written notice not more than five days following the completion of the hearing or the recount to the other parties concerned and to the judge or the recount officer and the notice may limit the appeal to specified disputed ballots.

Service  
of notice

(2) The notice shall be served upon the other parties personally or upon the solicitor who acted for the party or in the manner that the judge of the Divisional Court may direct.

Documents  
to be  
forwarded

(3) The judge or recount officer shall forward to the Registrar of the Supreme Court by registered mail,

- (a) the notice of appeal;
- (b) a certificate showing the findings of the judge or recount officer on the ballots or statements in dispute;
- (c) if the appeal is limited to specified disputed ballots, the ballots or statements of the vote that are the

subject of the appeal in the envelopes described in subsection 88c (7) and section 88d; and

- (d) if the appeal is not limited, all of the ballots, in the envelopes referred to in clause 88c (8) (b) or 88e (1) (b).

(4) The judge or recount officer shall await the result of the appeal before preparing the certificate under subsection 88c (9) or 88e (2). Certificate to be issued after appeal

(5) The judge or recount officer shall, upon request, allow each party to make a copy of the order or certificate, as the case may be, before it is forwarded to the Registrar. Copy of certificate

(6) On receipt of the ballots, notice and statement, the Registrar shall immediately obtain an appointment from the Divisional Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed. Appointment for hearing

(7) One judge of the Divisional Court shall determine the objection pertaining to, or count again, the ballots or such of them as are the subject of appeal, or review the re-addition, as the case may be, and shall immediately certify in writing the decision of the court to the judge of the District Court or to the recount officer. Determination by Divisional Court

(8) The judge or recount officer, in compliance with the decision of the Divisional Court, shall certify the result without delay. Certificate to reflect decision

**10. Subsection 103 (2) of the said Act is repealed.**

**11. Section 121 of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 37, section 25 and amended by 1985, chapter 4, section 10, is repealed.**

**12. The said Act is further amended by adding thereto the following Parts:**

## PART II

**121.—(1) In this Part,**

Definitions

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and con-



tributions of goods and services to the registered candidate, but does not include,

- (a) audit and accounting fees,
- (b) interest on loans under section 127,
- (c) an expense incurred in holding a fund-raising function referred to in section 126,
- (d) an expense incurred for victory parties held and appreciation notices published after polling day,
- (e) an expense relating to a recount in respect of the election, and
- (f) an expense relating to an action commenced under section 106;



“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election,
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required, or
  - (iv) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and ending,

- (c) in the case of a regular election, on the 31st day of March in the year following the election year, or
- (d) in the case of a new election, 135 days after polling day;



“contribution” means a contribution made to a registered candidate or representative of a registered candidate for pur-



poses of the election of the registered candidate at the next election, but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour, and
- (b) any service voluntarily performed for a registered candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual's employer, compensation in excess of what the individual would normally receive during the period the service was performed;

“municipality” means a city, town, village, police village, township, regional municipality or metropolitan municipality;

“registered candidate” means a candidate registered under section 122;

“trade union” means a trade union as defined in the *Labour Relations Act* or the *Canada Labour Code* that holds bargaining rights for employees in Ontario to whom those Acts apply and includes any central, regional or district labour council in Ontario.

R.S.O. 1980,  
c. 227  
R.S.C. 1970,  
c. L-1

(2) Where a corporation is associated with another corporation under section 256 of the *Income Tax Act* (Canada) and where one or both of those associated corporations does not or do not carry on an active business as that expression is defined in paragraph 125 (6) (d) of the *Income Tax Act* (Canada), the two associated corporations shall be considered as a single corporation for the purposes of this Part.

Associated  
corporations  
R.S.C. 1952,  
c. 148

## REGISTRATION

**122.**—(1) Every person who proposes to be a candidate shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the clerk of the municipality who is responsible for the conduct of the election a notice of registration in the prescribed form.

Registration  
of candidate

(2) In the case of a new election, the notice of registration referred to in subsection (1) shall be filed with the clerk no earlier than the day on which,

Registration  
in new  
elections

- (a) an order to hold a new election is given in any judicial proceedings;

- (b) the council of the municipality passes a by-law to hold a new election;
- (c) the clerk receives from the secretary of the school board notice that a new election is required; or
- (d) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and no later than nomination day.

When  
candidate  
registered

(3) A person who files a notice of registration under subsection (1) becomes a registered candidate on the day of filing.

No contri-  
butions to  
unregistered  
candidate

(4) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

Register

(5) The clerk shall keep a register of every person who has filed a notice of registration under subsection (1) setting out,

- (a) the date that the registered candidate is duly nominated under section 36;
- (b) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (c) the full name and address of the registered candidate;
- (d) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (e) the full names and addresses of the auditor and the chief financial officer, if any, of the registered candidate;
- (f) the full names and addresses of all persons authorized by the registered candidate to accept contributions;
- (g) the name and address of every chartered bank, trust company or other financial institution in Ontario

that is used by or on behalf of the registered candidate for the deposit of any contributions;

- (h) the full names and addresses of the persons, if any, responsible for making the deposits referred to in clause (g); and
- (i) the date of registration.

(6) A notice of registration under subsection (1) may be filed with the clerk by registered mail in which case it shall be deemed to be filed on the day it is mailed.

Effective date of registration

(7) The campaign period with respect to a registered candidate shall be deemed to expire,

Where registered candidate withdraws, etc.

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;
- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of death,

and the registered candidate or the chief financial officer shall file with the clerk the statement referred to in section 132.

(8) If the information referred to in subsection (5) is altered, the registered candidate shall immediately notify the clerk in writing of the alteration and, upon receipt of the notice, the clerk shall vary the register accordingly.

Variation of register

#### CHIEF FINANCIAL OFFICERS

**123.**—(1) Every person who proposes to be a candidate may appoint a chief financial officer before or after filing the notice of registration with the clerk.

Chief financial officer

(2) If the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the clerk of the full name and address of the new chief financial officer.

Replacement

(3) The chief financial officer shall be responsible for ensuring that,

Duties of chief financial officer

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in the appropriate accounts;
- (c) proper receipts are completed;
- (d) the financial statements required under section 132 and the auditor's report on the statements are filed with the clerk;
- (e) contributions consisting of goods or services are valued and recorded; and
- (f) proper direction is given to persons authorized to incur expenses.

Where  
no chief  
financial  
officer

(4) If a registered candidate has not appointed a chief financial officer, the registered candidate is responsible for the duties set out in subsection (3).

#### CONTRIBUTIONS

Contributions

**124.**—(1) Contributions to registered candidates may be made only by individuals, corporations and trade unions and may be made only during the campaign period.

Contributions  
to be made  
in campaign  
period

(2) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept contributions at any time other than during the campaign period.

How contri-  
butions of  
money to be  
made

(3) Money contributions to registered candidates in amounts in excess of \$25 shall only be made by,

- (a) a cheque having the name of the contributor legibly printed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Deposit of  
funds

(4) All moneys accepted by or on behalf of a registered candidate shall be paid into an account registered with the clerk under subsection 122 (5).



(5) If the registered candidate or the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the registered candidate or the chief financial officer shall, within thirty days after so learning and upon obtaining the contributor's copy of the receipt issued under section 125 in respect of that contribution, return the contribution or an amount equal to the sum contributed.

Refund of contributions

(6) Any contributions not returned to the contributor under subsection (5) or any anonymous contribution received by a registered candidate shall not be used or spent, but shall be paid over to the clerk and become part of the general funds of the municipality.

Anonymous contributions payable to municipality

(7) No individual, corporation or trade union shall make a contribution in money, goods and services to any registered candidate which in total exceeds \$750 in value during any campaign period.

Limitation on contributions

(8) Any moneys used for an election campaign by a registered candidate out of the registered candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this section, but the limit on the total amount of contributions established under subsection (7) does not apply in respect of those funds.

Registered candidate's funds, spouses's funds

(9) Every registered candidate shall submit to the clerk at the same time as the financial statement is filed under section 132, a statement in writing setting out campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the registered candidate, together with all receipts and claims for those expenses.

Statement to be submitted to clerk

**125.—**(1) No individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to that individual, corporation or trade union.

Contributor to contribute only funds belonging to contributor

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No registered candidate and no individual, corporation or trade union on behalf of the registered candidate shall solicit or accept any contribution contrary to subsection (1).

Prohibition

(4) No registered candidate shall accept funds from,

No funds from political parties, etc.



1973-74,  
c. 14 (Can.)

(a) a federal political party registered under the *Canada Elections Act* or any federal constituency association or registered candidate at a federal election endorsed by such federal political party; or

1986, c. 33

(b) a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act, 1986*.

Receipts

(5) A registered candidate shall issue receipts for every contribution accepted.

Group contri-  
butions

(6) A contribution to a registered candidate made through an unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution.

Application  
to amounts  
making up  
contribution

(7) The amounts making up a contribution under subsection (6) that are attributable to an individual, corporation or trade union are contributions of that individual, corporation or trade union for the purposes of subsection 124 (7).

Receipt of  
excess contri-  
butions  
prohibited

(8) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept any contributions in excess of the limits imposed under subsection 124 (7).

Restriction  
on contri-  
butions

(9) No registered candidate shall directly or indirectly solicit or accept contributions from,

(a) an individual normally resident outside Ontario;

(b) a corporation that does not carry on business in Ontario; or

(c) a trade union other than a trade union as defined in this Part.

Trade  
unions,  
contributions

(10) Contributions of not more than 15 cents per month by a member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of section 124 and this section, but any amount contributed to a registered candidate shall be deemed to be a contribution from the trade union.

Record of  
contributions  
to be kept

(11) Every registered candidate shall keep a record of all contributions in excess of \$25 or having a value in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contribu-

tions from a single source that in the aggregate exceed \$100, the name and address of the contributor.

**126.**—(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held. Definition

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period. When fund-raising functions to be held

(3) The gross income from a fund-raising function shall be recorded and reported to the clerk by the registered candidate or the chief financial officer. Income to be reported

(4) If a charge is made for a fund-raising function by the sale of tickets or otherwise, any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate, be considered not to be a contribution. Where charge may be considered not a contribution

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of current market value shall be considered a contribution. Where amounts to be considered contributions

(6) If a meeting is held on behalf of or in relation to the affairs of a registered candidate and money is given in response to a general collection of money solicited from the persons in attendance at the meeting, no amount shall be given anonymously by any person in excess of \$10 and the amounts so given shall be considered not to be contributions, but the gross amount collected shall be recorded and reported to the clerk by the registered candidate or the chief financial officer. Collection of money at meetings

## BORROWING

**127.**—(1) A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the registered candidate and reported to the clerk in the financial statement filed under subsection 132 (1). Borrowing

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1). Limitation

## LOAN GUARANTEE

Guarantee  
of loan to  
registered  
candidates  
prohibited

**128.**—(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate.

Exception

(2) An individual, corporation or trade union that is eligible to make a contribution may guarantee any loan referred to in subsection 127 (1).

Guarantee as  
contribution

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 127 (1) is considered to be a contribution under section 124.

## CAMPAIGN EXPENSES

Authority  
to incur  
campaign  
expenses

**129.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the registered candidate by persons authorized by the registered candidate.

Certificate  
of authority

(2) Every person authorized to incur a campaign expense shall, upon request, show a certificate, in the prescribed form, signed by the registered candidate as proof of the authority.

Record of  
campaign  
expenses

(3) Every registered candidate shall keep a record of all campaign expenses.

Limitation  
on campaign  
expenses

(4) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation, trade union or unincorporated association acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed the aggregate amount of \$5,500 plus \$0.50 per elector.

Idem

(5) Subject to subsection (6), the total campaign expenses incurred by a registered candidate in an election for the office of,

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality if this office is required to be filled by the vote of the electors of an area municipality; or

- (c) member of a school board or of a local board whose members are to be elected at elections required to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation, trade union or unincorporated association acting on behalf of the registered candidate during the period commencing with the date of registration and ending on polling day in the election shall not exceed the amount of \$3,500 plus \$0.50 per elector.

(6) If the municipality or the school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of the wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Limitation on campaign expenses, ward elections

(7) For the purpose of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

Determination of number of electors by returning officer

(8) After determining the number of electors under subsection (7), the clerk shall calculate, for each office, the maximum amount of campaign expenses that may be incurred by a registered candidate under subsection (4), (5) or (6), as applicable, certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or send by registered mail a copy of the certificate to each registered candidate for the office.

Calculation and certification of maximum campaign expenses by returning officer, etc.

(9) Certification of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office by the clerk under subsection (8) shall be conclusive evidence of that fact and shall not be open to challenge.


Certificate conclusive

**130.**—(1) Every individual, corporation or trade union that has any claim for payment in relation to a campaign expense shall submit the claim after polling day to the registered candidate who incurred the expense,

Time for submission of claims for payment

- (a) in the case of a regular election, no later than the 31st day of March in the year following the election year; or



- (b) in the case of a new election, no later than 135 days after polling day. 

Payment of  
expenses by  
registered  
candidate

(2) Every payment of a campaign expense shall be made by the registered candidate or the chief financial officer who incurred or on whose behalf the campaign expense was incurred and, except where the campaign expense is less than \$25, a receipt shall be obtained setting out the particulars and proof of payment.

Method of  
payment

(3) Payment of any campaign expense shall be made by cheque drawn on an account registered with the clerk under subsection 122 (5).

Disputed  
claims

(4) If the registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

#### AUDITORS

Appointment  
of auditor

**131.**—(1) If contributions received by a registered candidate exceed \$10,000 or expenses incurred by the registered candidate exceed \$10,000 during the campaign period, the registered candidate shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately inform the clerk of the full name and address of the auditor.

R.S.O. 1980,  
c. 405

Report of  
auditor


(2) The auditor shall make a report to the registered candidate or the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 132, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards.

Change of  
auditors

(3) If an auditor appointed under subsection (1) ceases to hold office, ceases to be qualified under subsection (1) or becomes ineligible under subsection (4), the candidate shall immediately appoint another auditor licensed under the *Public Accountancy Act* and shall immediately notify the clerk of the full name and address of the auditor.

R.S.O. 1980,  
c. 405

Persons not  
eligible to be  
auditors

(4) No election official and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the registered candidate. 

Report of  
auditor

(5) If,



- (a) the auditor has not received from the registered candidate or the chief financial officer all the information and explanation that is required to make the report; or
- (b) proper accounting records have not been kept by the registered candidate or the chief financial officer,

the auditor shall make a statement to that effect in the report made under subsection (2).

(6) An auditor appointed under subsection (1) shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate. Right of access

(7) The registered candidate or the chief financial officer shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (2). Co-operation required

#### STATEMENTS, REPORTS AND STATUTORY DECLARATIONS




**132.**—(1) Subject to subsections (3) and (4), every registered candidate shall file with the clerk who was the returning officer in the election a financial statement and auditor's report in the prescribed form which shall contain, Filing of financial statement

- (a) all income received and expenses incurred in the campaign period;
- (b) a list of contributions in the form of goods or services and the value of them received by or on behalf of the registered candidate during the campaign period;
- (c) the name, address and contribution of each individual, corporation or trade union that made a contribution, whether in the form of money, goods or services, if the contribution was more than \$100; and
- (d) a list of campaign expenses, paid and outstanding, incurred in a campaign period and a statement of disputed claims.

(2) The financial statement and auditor's report under subsection (1) shall be filed, Idem

- (a) in the case of a regular election, no later than the 30th day of June in the year following the election year; or
- (b) in the case of a new election, no later than 225 days after polling day.

Where report  
sufficient

(3) If the contributions received by or on behalf of a registered candidate do not exceed \$10,000 or expenses incurred by or on behalf of the registered candidate do not exceed \$10,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a report in the prescribed form containing the information required in subsection (1). 

Where  
statutory  
declaration  
sufficient

(4) If the contributions received by or on behalf of a registered candidate do not exceed \$1,000 and expenses incurred by or on behalf of such registered candidate do not exceed \$1,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a statutory declaration in the prescribed form to that effect.

Clerk  
to prepare  
statement

(5) After the time for the filing of a statement, report or declaration under subsection (1), (3) or (4) has expired, the clerk shall immediately prepare a statement in the prescribed form disclosing,

- (a) the information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Demand  
to candidate  
to file

(6) After the time prescribed for making full disclosure under subsection (1) has expired, the clerk shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement, report or declaration, a notice in the prescribed form demanding that the registered candidate file a statement, report or declaration within thirty days from the date of the notice.

Contents  
of demand  
notice

(7) The notice under subsection (6) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not elected, shall be ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the

statement, report or declaration within thirty days of the date of the notice.

(8) The clerk shall post a notice of non-compliance in the prescribed form in two conspicuous places in the municipality and, where there is a newspaper having general circulation in the municipality, by publishing the notice in such newspaper.

Publishing  
notice of  
non-com-  
pliance

(9) After the thirty day period for the filing of a statement, report or declaration has expired, the clerk shall immediately prepare a supplementary statement in the prescribed form disclosing,

Clerk  
to prepare  
supple-  
mentary  
statement

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section, within the thirty day period allowed by subsection (6),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

**133.—(1)** If a registered candidate,

Ineligibility  
respecting  
future  
elections

- (a) fails to file a financial statement, a report or statutory declaration as required by section 132 within thirty days of the date of the notice sent under subsection 132 (6);
- (b) files a financial statement, a report or statutory declaration as required by section 132 that is either incorrect or does not comply with section 132 and fails to file a correction statement, report or declaration, as the case may be, within thirty days from the date that the clerk files the statement under subsection 132 (5); or
- (c) incurs campaign expenses in excess of the amount permitted under section 129,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has

Forfeiture  
of office

exceeded the amount referred to in clause (1) (c), the clerk shall within five days of the default notify in writing the registered candidate and the council, school board or local board, as the case may be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

Ineligibility  
respecting  
future  
elections

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

#### ACCESS TO DOCUMENTS

Inspection of  
documents

**134.**—(1) Documents, financial statements, reports and declarations filed with the clerk under this Part are public records and may be inspected by any person upon request at the office of the clerk during normal office hours.

Extracts and  
copies

(2) Any person may make extracts from the statements, reports or declarations referred to in subsection (1) and is entitled to copies thereof upon payment for the preparation of the copies at such rate as the clerk charges for the preparation of copies of other documents.

Not to be  
used for  
commercial  
solicitation

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the clerk under this Part for the purposes of commercial solicitation.

Section  
applicable to  
certain  
statements

(4) This section applies to a statement prepared by the clerk that is required to be submitted to the council of the municipality, the school board or local board under subsection 132 (5) or (9).

#### OFFENCES

Offence by  
corporation  
or trade  
union

**135.**—(1) A corporation or trade union that contravenes any of sections 122 to 134 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offence

(2) An individual who contravenes any of sections 122 to 134, except subsection 124 (7), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.



(3) If the total campaign expenses incurred by a registered candidate or any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 129 for the office subject to election, the candidate, in addition to the fine set out in subsection (2), is liable to a fine equal to the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 129.

Additional  
penalty

**136.** No prosecution shall be instituted for a contravention of any of sections 122 to 134 more than one year after the facts upon which the prosecution is based first came to the knowledge of the informant.

One year  
limitation

**137.—**(1) No person shall obstruct a person making an investigation or examination under this Act or withhold or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

Obstructing  
investigation,  
etc.

(2) No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the clerk under section 132 or 133.

False  
statements

### PART III

**138.—**(1) In this Part,

Definitions

“broadcasting undertaking” means a broadcasting undertaking as defined in section 2 of the *Broadcasting Act* (Canada);

R.S.C. 1970,  
c. B-11

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and contributions of goods and services to the registered candidate but not including,

- (a) auditor’s and accounting fees,
- (b) interest on loans authorized under section 162,
- (c) an expense incurred in holding a fund-raising function referred to in section 153,
- (d) an expense incurred for victory parties and appreciation notices published after polling day,



- (e) an expense relating to a recount in respect of the election,
- (f) an expense relating to an action commenced under section 106, and
- (g) other expenses not of partisan value that are set out in guidelines provided by the Commission;



“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election,
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required, or
  - (iv) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and ending,

- (c) in the case of a regular election, on the 31st day of March in the year following the election year, or
- (d) in the case of a new election, 135 days after polling day;



1986, c. 33

“Commission” means the Commission on Election Finances established by the *Election Finances Act, 1986*;

“contribution” means a contribution made to a representative of a registered candidate but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour,
- (b) any service voluntarily performed for a candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual’s employer, compensation in

excess of what the individual would receive during the period the service was performed, and

- (c) any moneys, goods or services solicited by or donated to a registered candidate for purposes other than those set out in subsection 143 (3);

“municipality” means a city, town, village, police village, township, regional municipality or metropolitan municipality;

“news reporting done in good faith” means interviews, commentaries or other works prepared for and published by any newspaper, magazine or other periodical publication or broadcast on the facilities of any broadcasting undertaking without charge to any candidate registered under this Part;

“outdoor advertising facilities” means outdoor facilities provided by any person that is in the business of providing these facilities on a commercial basis for advertising purposes but does not include radio, television, newspaper, magazine or other periodical publications;

“registered candidate” means a candidate registered under section 143;

“trade union” has the same meaning as in Part II.

➡  
(2) Where a corporation is associated with another corporation under section 256 of the *Income Tax Act* (Canada) and where one or both of those associated corporations does not or do not carry on an active business as that expression is defined in paragraph 125 (6) (d) of the *Income Tax Act* (Canada), the two associated corporations shall be considered as a single corporation for the purposes of this Part. ▲

Associated corporations  
R.S.C. 1952,  
c. 148

#### APPLICATION

**139.**—(1) Notwithstanding Part II, the council of a municipality may pass a by-law to have this Part apply to elections for the office of member of council including the head of the council of the municipality.

Council may  
by by-law  
adopt this  
Part

(2) If a by-law is passed under subsection (1), this Part applies to the election of members of council.

Application  
of Part

(3) Where the council of a regional municipality or metropolitan municipality passes a by-law under subsection (1), the clerk of the regional or metropolitan municipality shall send a copy of the by-law to the Commission and to the clerk of any

By-laws to  
be sent to  
Commission  
and clerk

area municipality who is responsible for the conduct of any election to the council of the regional or metropolitan municipality.

By-laws to  
be sent to  
Commission

(4) Where the council of a municipality, other than a regional or metropolitan municipality, passes a by-law under subsection (1), the clerk of the municipality shall send a copy of the by-law to the Commission.

School board  
may adopt  
this Part

**140.**—(1) Notwithstanding Part II, where members of a school board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the school board may pass a resolution to have this Part apply to elections of members of the board.

Application  
of Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of members of the board.

Resolution of  
school board  
to be sent to  
Commission  
and clerk

(3) Where a school board passes a resolution under subsection (1), the secretary of the board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

Local board  
may adopt  
this Part

**141.**—(1) Notwithstanding Part II, where members of a local board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the local board may pass a resolution to have this Part apply to elections of members of the board.

Application  
of Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of the board.

Resolution of  
local board  
to be sent to  
Commission  
and clerk

(3) Where a local board passes a resolution under subsection (1), the secretary of the local board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

When by-  
laws or  
resolution to  
be passed or  
repealed

**142.** A by-law under section 139 or a resolution under section 140 or 141 shall be passed prior to the 1st day of January of an election year and, once passed, shall remain in force until repealed by a by-law of the council of the municipality or by a resolution of the school board or the local board, as the case may be, but no such repealing by-law or resolution shall be passed or take effect in an election year.

## REGISTRATION

**143.**—(1) Where the council of a municipality passes a by-law under section 139 or a school board or local board passes a resolution under section 140 or 141, every person seeking election to office on the council, school board or local board, as the case may be, shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the Commission an application for registration under this Part.

Application  
for  
registration  
as candidate

(2) In the case of a new election, the application for registration referred to in subsection (1) shall be filed with the Commission no earlier than the day on which,

Application,  
new elections

- (a) an order to hold a new election is given in any judicial proceedings;
- (b) the council of the municipality passes a by-law to hold a new election;
- (c) the clerk receives from the secretary of a school board notice that a new election is required; or



- (d) an order to hold a new election is given by the Minister under the *Municipal Act*,



R.S.O. 1980,  
c. 302

and not later than nomination day.

(3) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

No contri-  
butions to  
unregistered  
candidate

(4) The Commission shall maintain a register of candidates in relation to each election and shall register in it any candidate who files an application for registration with the Commission setting out,

Register

- (a) that the person,
  - (i) has been duly nominated for election to office in accordance with this Act and whose nomination is certified by the clerk, or
  - (ii) has not been so nominated but proposes to become so;



- (b) the name of the office for which the candidate has been or proposes to be nominated;
- (c) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (d) the full name and address of the registered candidate;
- (e) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (f) the full names and addresses of the auditor and the chief financial officer of the registered candidate;
- (g) the full name and addresses of all persons authorized by the registered candidate to accept contributions;
- (h) the name and address of every chartered bank, trust company or other financial institution in Ontario that is used by or on behalf of the registered candidate for the deposit of any contributions;
- (i) the full names and addresses of the persons responsible for making the deposits referred to in clause (h).

Effective  
date of  
registration

(5) A registered candidate who files an application under subsection (4) shall be deemed to be registered on the day of filing.

Idem

(6) An application under subsection (4) may be filed with the Commission by registered mail in which case it shall be deemed to be filed on the day it is mailed.

Where  
registered  
candidate  
withdraws,  
etc.

(7) The campaign period with respect to a registered candidate shall be deemed to expire,

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;



- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of death,

and the chief financial officer for that registered candidate shall file with the Commission the statement referred to in section 169 and at the same time file a copy of it with the clerk.

(8) If the information referred to in clauses (4) (d) to (i) is altered, the candidate shall immediately notify the Commission in writing of the alteration, and, upon receipt of the notice, the Commission shall vary the register accordingly.

Variation of register

**144.**—(1) After registering a candidate under subsection 143 (4), the Commission shall notify in writing the clerk of the municipality who is responsible for the conduct of the election and indicate to the clerk,

Notification by Commission to clerk

- (a) the full name and address of the registered candidate; and
- (b) the name of the office for which the registered candidate has been, or will be nominated.

(2) The clerk shall maintain a list of all registered candidates and the office for which the registered candidate has been, or will be, nominated.

Clerk to maintain list of candidates

(3) Where the full name and address of a registered candidate is varied by the Commission under subsection 143 (8), the Commission shall immediately notify the clerk in writing of the variation, and, upon receipt of the notice, the clerk shall vary the list of registered candidates accordingly.

Notification of changes

#### CHIEF FINANCIAL OFFICERS

**145.**—(1) Every person who is applying for registration under this Part, before filing an application with the Commission, shall appoint a chief financial officer.

Chief financial officer

(2) Where the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the Commission of the full name and address of the new chief financial officer.

Replacement

Duties  
of chief  
financial  
officer

(3) The chief financial officer shall be responsible for ensuring that,

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in a depository on record with the Commission;
- (c) proper receipts are completed and dealt with in accordance with this Part;
- (d) the financial statements as required by section 169 together with the auditor's report on those statements, are filed with the Commission in accordance with this Part;
- (e) contributions consisting of goods or services are valued and recorded in accordance with this Part; and
- (f) proper direction is given to persons authorized to incur expenses.

#### CONTRIBUTIONS

Contributions

**146.**—(1) Contributions to registered candidates may be made by individuals, corporations and trade unions only during the campaign period.

How contri-  
butions of  
money to  
be made

(2) Money contributions to registered candidates in amounts in excess of \$25 shall be made only by,

- (a) a cheque having the name of the contributor legibly printed or typed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Deposit  
of funds

(3) All moneys accepted by or on behalf of a registered candidate shall be paid into an account on record with the Commission.

Refund of  
contributions

**147.**—(1) If the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the chief financial officer shall, within thirty days after so learning and

upon obtaining the contributor's copy of the receipt issued under section 155 in respect of that contribution, return the contribution or an amount equal to the sum contributed.

(2) Any contributions not returned to the contributor in accordance with subsection (1) or any anonymous contribution received by a registered candidate shall not be used or spent; but shall be paid over to the Commission and become part of the general funds of the Commission to be used by the Commission in carrying out its responsibilities under this or any other Act.

Anonymous contributions

**148.**—(1) No individual, corporation or trade union shall make a contribution in money, goods and services to a registered candidate which in total exceeds \$750 in value during any campaign period.

Limitation on contributions

(2) Any moneys used for an election campaign by a registered candidate out of the candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this Part, but the limit on the total amount or value of contributions established under subsection (1) does not apply in respect of those funds.

Registered candidate's funds, spouse's funds

(3) Every registered candidate shall submit to the chief financial officer a statement in writing setting out all campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the candidate, together with all receipts and claims for those expenses, within six months after polling day.

Statement to be submitted

**149.**—(1) Subject to section 159, no individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to the individual, corporation or trade union.

Contributor to contribute only funds belonging to contributors

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No registered candidate and no individual, corporation or trade union on behalf of the candidate, shall solicit or accept any contribution contrary to subsection (1).

Prohibition

**150.** No registered candidate shall accept funds from,

No funds from political parties, etc. 1973-74, c. 14 (Can.)

- (a) a federal political party registered under the *Canada Elections Act* or any federal constituency association

or candidate at a federal election endorsed by such federal political party;

- (b) a provincial political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act, 1986*.

1986, c. 33

Determina-  
tion of  
value of  
goods and  
services

**151.**—(1) The value of goods and services provided as a contribution to a registered candidate is,

- (a) where the contributor is in the business of supplying these goods and services, the lowest amount charged by the contributor for an equivalent amount of similar goods and services at or about the time and in the same market area;
- (b) where the contributor is not in the business of supplying these goods or services, the lowest amount charged, at or about the time the goods or services are provided, by any other individual, corporation or trade union providing similar goods or services on a commercial retail basis in the same market area.

Where goods  
or services  
less than  
\$100

(2) Goods or services having a total value of \$100 or less may, at the option of the individual, corporation or trade union providing these goods or services, be considered not to be a contribution for the purposes of this Part.

Where goods  
or services  
provided at  
less than  
value

(3) Where goods or services are provided to a registered candidate for a price that is less than the value of the goods or services as determined under subsection (1), the amount that the price is less than that value shall, subject to subsection (2), be a contribution for the purpose of this Part.

Political  
advertisements

**152.**—(1) Where any individual, corporation or trade union with the knowledge and consent of a registered candidate promotes the election of the candidate or opposes the election of any other registered candidate by advertising on the facilities of any broadcasting undertaking, by publishing an advertisement in a newspaper, magazine or other periodical publication, by printing leaflets, pamphlets or other documents or through the use of any outdoor advertising facility and the amount of the cost of the advertisement,

- (a) in the case of any single advertisement, is more than \$100; and



- (b) in the case of any advertisements from a single service broadcast or published in any campaign period, in total exceeds \$100,

this amount shall be considered to be a contribution and, if done during the campaign period, a campaign expense of the candidate with whose knowledge and consent the political advertising was done.

(2) Notwithstanding subsection (1), where political advertising is provided on the facilities of any broadcasting undertaking without charge to registered candidates in a particular municipality or school board or local board jurisdiction in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines issued thereunder, such political broadcasts shall not be considered a contribution or a campaign expense.

Idem

R.S.C. 1970,  
c. B-11

(3) No individual, corporation or trade union shall cause any political advertisement to be broadcast on the facilities of any broadcasting undertaking or published in any newspaper, magazine or other periodical publication or through the use of any outdoor advertising facility unless the broadcaster or publisher of the political advertisement is furnished with the identification, in writing, of the individual, corporation or trade union sponsoring the political advertisement.

Identity of  
sponsor of  
advertisement  
to be known

(4) A broadcaster who broadcasts or a publisher who publishes a political advertisement shall maintain records for a period of two years after the date of the broadcast or publication setting out the advertisement, the charge for it and any material relating to identification furnished to the broadcaster or publisher in connection with the advertisement and shall permit the public to inspect these records during normal office hours.

Records to  
be  
maintained of  
political  
advertisement

(5) All political printed advertising, handbills, placards, posters and broadcast or telecast advertisements shall bear or make reference to the name of the individual, corporation or trade union sponsoring the political advertising.

Name of  
sponsor to be  
included in  
political  
advertising

(6) In this section, “political advertisement” and “political advertising” mean any matter promoting or opposing the election of any registered candidate for which a fee is paid, but does not include any news reporting done in good faith.

Definition

**153.—**(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held.

Definition



Restriction  
on fund  
raising

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period.

Income to be  
reported to  
Commission

(3) The gross income from any fund-raising function shall be recorded and reported to the Commission by the chief financial officer of the registered candidate who held the function or on whose behalf the function was held.

Sale of  
tickets, etc.

(4) Where a charge by the sale of tickets or otherwise is made for a fund-raising function, all or any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate by whom or on whose behalf the function was held, be considered not to be a contribution for the purposes of this Part.

Excess  
payments  
considered  
contributions

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of the highest amount charged, at or about the time the goods or services are provided, by any other person providing similar goods on a commercial basis in the same market area shall be considered a contribution.

Collections at  
meeting

**154.**—(1) Where, at a meeting held on behalf of a registered candidate, money is given in response to a general collection of money solicited, no amount shall be given anonymously by any person in excess of \$10.

Idem,  
reporting  
of amount

(2) The amounts given under subsection (1) shall be considered not to be contributions but the gross amount collected shall be recorded and reported to the Commission by the chief financial officer.

Receipts to  
be issued for  
contributions

**155.**—(1) Every registered candidate shall issue or cause to be issued receipts in the form prescribed by the Commission for every contribution accepted.

Form of  
receipt

(2) A receipt prescribed by the Commission under subsection (1) shall provide, on its face, for the acknowledgment of the contribution accepted by or on behalf of the registered candidate and, on its back, for an application to the clerk of the municipality who was responsible for conducting the election for a tax credit that the contributor is eligible to receive under this Part on account of the contribution.

Group contri-  
butions to be  
recorded as  
to source

**156.**—(1) Any contribution to a registered candidate made through any unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution.

(2) The amounts making up a contribution under subsection (1) that are attributable to any individual, corporation or trade union are contributions of that individual, corporation or trade union. Idem

**157.** No registered candidate and no individual, corporation or trade union on behalf of the candidate shall solicit or accept any contributions in excess of the limits imposed by this Part. Prohibition

**158.** No registered candidate shall directly or indirectly solicit or accept contributions from, Restriction on contributions

- (a) any individual normally resident outside Ontario;
- (b) any corporation that does not carry on business in Ontario; or
- (c) a trade union other than a trade union as defined in this Part.

**159.** Contributions of not more than 15 cents per month by any member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of this Part, but any amounts contributed to a registered candidate from these funds shall be considered to be a contribution from the trade union. Contributions by payroll deduction

**160.** No contribution shall be accepted by a registered candidate except through the chief financial officer or other person on record with the Commission as authorized to accept contributions. Contributions not to be accepted by candidate directly

**161.** Every registered candidate shall keep a record of all contributions in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contributions from a single source that in the aggregate exceed \$100, the name and address of the contributor. Record of contributions to be kept

#### BORROWING

**162.—**(1) A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the candidate and reported to the Commission. Borrowing

## Limitation

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1).

## LOAN GUARANTEE

## Guarantee of loans to registered candidates prohibited

**163.**—(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate.

## Exception

(2) An individual, corporation or trade union that is eligible to make a contribution under this Part may guarantee any loan referred to in subsection 162 (1).

## Guarantee as contribution

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 162 (1) is considered to be a contribution under section 148.

## CAMPAIGN ADVERTISING

## Restriction on advertising

**164.**—(1) No registered candidate and no individual, corporation or trade union acting with the candidate's knowledge and consent shall, except during the period of twenty-eight days immediately preceding the day before polling day,

- (a) advertise on the facilities of any broadcasting undertaking; or
- (b) procure for publication, cause to be published or consent to the publication of an advertisement in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities,

for the purposes of promoting or opposing the election of a registered candidate.

## Idem

(2) No individual or corporation shall, during the period prescribed in subsection (1), broadcast on the facilities of any broadcasting undertaking or publish in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities an advertisement promoting or opposing the election of a registered candidate on behalf of any registered candidate or any individual, corporation or trade union acting with the candidate's knowledge or consent.

## Exemptions

(3) Subsections (1) and (2) do not apply to,

- (a) advertising public meetings in the municipality or the jurisdiction of the school board or local board, as the case may be;
- (b) announcing the location of the campaign headquarters of a candidate;
- (c) advertising for volunteer campaign workers;
- (d) announcing services for electors by candidates respecting the revision of the preliminary list and additions to the polling list;
- (e) announcing services for electors on polling day; or
- (f) any other matter respecting administrative functions of a candidate's campaign headquarters,

if the advertisements, announcements and other matters are done in accordance with the guidelines of the Commission.

(4) Nothing contained in subsection (1) prohibits news reporting done in good faith during the period referred to in subsection (1) or the procuring for publication or the publishing of, Idem

- (a) an advertisement referred to in subsection (1) on the day immediately preceding polling day in a newspaper which is published in the municipality or in the jurisdiction of the school board or local board, as the case may be, not more frequently than once a week if the day of regular publication falls on the day immediately preceding polling day; or
- (b) an advertisement referred to in subsection (1) on the day immediately preceding polling day and on polling day through the use of any outdoor advertising facility.

(5) Nothing in subsection (1) prohibits the broadcasting on the facilities of a broadcasting undertaking of news reporting done in good faith in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines published thereunder during the period referred to in subsection (1). Idem,  
broadcasting  
R.S.C. 1970,  
c. B-11

(6) No individual or corporation shall,

- (a) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for broadcasting time on any broadcasting undertak-

Limitations  
on charges  
for  
broadcasting,  
publishing



ing in the period beginning on the twenty-eighth day before the day immediately before polling day at an election and ending on the second day before polling day, that exceeds the lowest rate charged by the individual or corporation for an equal amount of equivalent time on the same facilities made available to any other person in that period; or

- (b) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for an advertisement in a periodical publication published or distributed and made public in the period referred to in clause (a) that exceeds the lowest rate charged by the individual or corporation for an equivalent amount of advertising space in the same issue of the periodical or in any issue published or distributed and made public in that period.

#### CAMPAIGN EXPENSES

Authorized  
expenses

**165.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the chief financial officer of the candidate by persons authorized by the chief financial officer.

Proof of  
authority

(2) Every person authorized to incur a campaign expense by a chief financial officer under subsection (1) shall, upon request, show a certificate, in the form prescribed by the Commission, signed by the chief financial officer as proof of the authority.

Limitation on  
campaign  
expenses,  
head of  
council

**166.**—(1) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation or trade union acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$5,500, plus \$0.50 per elector.

Idem,  
members of  
council, etc.

(2) Subject to subsection (3), the total campaign expenses incurred by a registered candidate in an election for the office of,

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality;



- (c) member of a school board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality; or
- (d) member of a local board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation or trade union acting on behalf of that candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$3,500, plus \$0.50 per elector.

(3) Where the municipality, school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of those wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Campaign  
expenses,  
ward system

(4) For the purposes of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

Determi-  
nation of  
number  
of electors

(5) After determining the number of electors under subsection (4), the clerk shall calculate, for each office, the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for an office under subsection (1) or (2), and certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or cause to be delivered personally or send or cause to be sent by registered mail a copy of the certificate to each registered candidate for the office and to the Commission.


Duties  
of clerk

(6) Certification of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office by the clerk under subsection (5) is conclusive evidence of the fact.

Clerk's  
certificate  
conclusive

➡  
**167.**—(1) Every individual who or corporation or trade union which has any claim for payment in relation to a campaign expense shall submit the claim to the chief financial officer of the registered candidate who incurred the expense,

Submission  
of payment  
claims

- (a) in the case of a regular election, no later than the 31st day of March in the year following the election year; or
- (b) in the case of a new election, no later than 135 days after polling day. 

Payment  
of claims

(2) Every payment of a campaign expense shall be made by the chief financial officer of the registered candidate who incurred the campaign expense and, except where the campaign expense is less than \$25, the chief financial officer shall set out the particulars of payment.

Disputed  
claims

(3) Where the chief financial officer of a registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

#### AUDITORS

Appointment  
of auditor

R.S.O. 1980,  
c. 405

**168.**—(1) Every candidate, at the time of appointing a chief financial officer, shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor.

Change of  
auditors

R.S.O. 1980,  
c. 405

(2) If an auditor appointed under subsection (1) ceases to hold office, ceases to be qualified under subsection (1) or becomes ineligible under subsection (3), the candidate shall immediately appoint another auditor licensed under the *Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor.

Persons not  
eligible to be  
auditors

(3) No election official and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the registered candidate.

Report of  
auditor

(4) The auditor shall make a report to the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 169, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards.

Idem

(5) If,

- (a) the auditor has not received from the chief financial officer all the information and explanation that is required; or
- (b) proper accounting records have not been kept by the chief financial officer so far as appears from the auditor's examination,

the auditor shall make a statement to that effect in the report made under subsection (4).

(6) An auditor shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate. Right of access


(7) The chief financial officer of the candidate shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (4). Co-operation required

#### FINANCIAL STATEMENTS

 **169.**—(1) The chief financial officer of every registered candidate shall file with the Commission, Filing of financial statements with Commission

- (a) a financial statement setting out,
  - (i) all income received and expenses incurred in the campaign period,
  - (ii) all campaign expenses, paid and outstanding, incurred in a campaign period and a statement of all disputed claims, and
  - (iii) all information required to be recorded under section 161 that relates to the campaign period; and
- (b) the auditor's report on the financial statement.

(2) The financial statement and auditor's report under subsection (1) shall be filed, Idem

- (a) in the case of a regular election, no later than the 30th day of June in the year following the election year; or
- (b) in the case of a new election, no later than 225 days after polling day. 

Filing of  
financial  
statements  
with clerk of  
municipality

(3) The chief financial officer shall, at the time of filing with the Commission, file a copy of the financial statement and the auditor's report referred to under subsection (1) with the clerk of the municipality who was responsible for the conduct of the election for which the registered candidate was registered.

Commission  
to prepare  
statement

(4) After the time for the filing of a financial statement and auditor's report has expired, the Commission shall immediately prepare a statement disclosing,

- (a) the information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement or report under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Demand to  
candidate to  
file

(5) After the time for the filing of the financial statement and auditor's report has expired, the Commission shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement and report, a notice in the form prescribed by the Commission demanding that the registered candidate file a financial statement and auditor's report within thirty days from the date of the notice.

Contents of  
demand  
notice

(6) The notice under subsection (5) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not, is ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the financial statement and auditor's report within thirty days of the date of the notice.

Publication  
of notice

(7) The Commission shall publish the notice under subsection (5) in a newspaper having general circulation in the municipality. \*

Commission  
to prepare  
supple-  
mentary  
statement

(8) After the thirty day period for the filing of a statement and report has expired, the Commission shall immediately prepare a supplementary statement disclosing,

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a financial statement and auditor's



report within the thirty day period allowed under subsection (5),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

#### SURPLUS

**170.**—(1) Where the financial statement of a registered candidate filed under section 169 shows a surplus, the surplus shall be immediately paid over to the clerk who was responsible for the conduct of the election who shall hold it in trust for the registered candidate for use in whole or in part by the registered candidate in the next regular election. Surplus funds

(2) The clerk shall not release the surplus held in trust for a candidate under subsection (1) to the candidate for use in whole or in part in the next regular election until the clerk has been notified by the Commission under section 143 that the candidate has become registered under this Part for that election. Release of funds, regular elections

(3) Where the candidate for whose benefit the surplus is held in trust under subsection (1) becomes registered under this Part for a new election that precedes the next regular election, the clerk, upon being so notified by the Commission, shall release the surplus to the candidate for use in whole or in part in that new election. Idem, new elections

(4) No surplus shall be released under subsection (2) or (3) to the registered candidate for whose benefit it is held in trust under subsection (1) where the office for which the candidate has been, or will be, nominated in the election is not on the same council, school board or local board, as the case may be, as the office in respect of which the surplus was produced. Restriction

(5) Where the candidate for whose benefit the surplus is held in trust under subsection (1), Disposal of surplus

- (a) notifies the clerk in writing that the candidate does not intend to seek nomination;
- (b) fails to be nominated;
- (c) is ineligible to be nominated; or
- (d) fails to become registered,



in the next regular election, the surplus shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Idem

(6) Upon the repeal of any by-law passed under section 139 or any resolution passed under section 140 or 141, any surplus held by the clerk under this section shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Ineligibility  
respecting  
future  
elections

**171.—(1)** If a registered candidate,

- (a) fails to file a financial statement and auditor's report within thirty days of the date of the notice sent under subsection 169 (5);
- (b) files a financial statement and auditor's report that is either incorrect or does not comply with section 169 and fails to file a correction statement and report within thirty days from the date that the Commission files the statement under subsection 169 (5); or
- (c) incurs campaign expenses in excess of the amount permitted under section 166,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

Forfeiture  
of office

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has exceeded the amount referred to in clause (1) (c), the Commission shall within five days of the default notify in writing the registered candidate and the council, school board or local board, as the case may be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

Ineligibility  
respecting  
future  
elections

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

**172.**—(1) Where the financial statement of a registered candidate who is not declared elected shows a surplus and the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170, the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless before that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility  
where surplus  
not paid to  
clerk

(2) Where,

Office  
declared  
vacant

- (a) a registered candidate is declared elected;
- (b) the financial statement of the candidate shows a surplus; and
- (c) the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170,

the Commission shall notify in writing the candidate and the council, school board or local board, as the case may be, to which the candidate was elected and the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under this Act.

(3) Where the office to which a registered candidate was declared elected is subsequently declared vacant under subsection (2), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless prior to that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility  
respecting  
future  
elections

#### TAX CREDIT

**173.**—(1) Every individual who and every corporation or trade union which made a contribution to a candidate registered under this Part during the campaign period of an election may within one year of polling day apply, in the form prescribed by the Commission, to the clerk of the municipality who was responsible for conducting the election to receive a tax credit.

Tax credit

(2) The tax credit which a contributor is eligible to receive under subsection (1) is an amount equal to,

Amount of  
tax credit

- (a) 75 per cent of the total amount contributed by the contributor to all candidates if the amount contributed does not exceed \$100;
- (b) \$75 plus 50 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$100 and does not exceed \$400; or
- (c) the lesser of,
  - (i) \$225 plus 33 1/3 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$400 if the total amount contributed exceeds \$400, and
  - (ii) \$350,

if payment of each amount that is included in the total amount contributed by the contributor to all registered candidates is proven by receipts in the form prescribed by the Commission that are signed by a recorded agent of the candidate.

Reduction of  
tax credits

(3) A tax credit under subsection (2),

- (a) shall first be applied by the clerk to reduce any arrears in taxes or other debts then owing to the municipality by the contributor; and
- (b) may be applied to offset current taxes, at the request of the contributor.

Payment of  
rebates

(4) Where the contributor does not owe any taxes or other debts to the municipality or does not make the request under clause (3) (b), the clerk shall pay to the contributor an amount equal to the amount of the tax credit which the contributor is eligible to receive under subsection (2).

Recovery of  
tax credit

(5) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in an election for the office of chairman or member of the council of a regional or metropolitan municipality, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the regional or metropolitan municipality by billing the regional or metropolitan municipality for that amount.

Recovery of  
tax credit  
from school  
board

(6) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a reg-

istered candidate in a school board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the school board by billing the school board for that amount.

(7) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a local board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the local board by billing the local board for that amount.

Recovery of  
tax credit  
from local  
board

(8) No tax credit shall be provided to a contributor under subsection (3) or (4) until the Commission has notified the clerk in writing that all of the financial statements and auditor's reports filed with it by the chief financial officers of the registered candidates in the election as required by section 169 have been examined.

Condition for  
giving tax  
credits

(9) Tax credits shall be issued to contributors only during the one-year period following receipt of the notice given by the Commission under subsection (8).

Time  
restriction

(10) No tax credit shall be provided to a contributor under subsection (3) or (4) for a contribution to a registered candidate where the chief financial officer of the candidate has failed to file the financial statement and auditor's report required by section 169 or where the financial statement and auditor's report of the candidate have been found by the Commission to be unsatisfactory.

Refusal of  
tax credit

(11) In this section, "tax credit" includes a rebate of contributions.

Interpretation

#### ACCESS TO DOCUMENTS

**174.**—(1) Documents filed with the Commission or the clerk of a municipality under this Part are public records and may be inspected by any person upon request at the office of the Commission or of the clerk during normal office hours.

Inspection of  
documents

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the documents upon payment for the preparation of the copies at such rate as the Commission may determine or at such rate as the clerk charges for the preparation of copies of other documents.

Extracts and  
copies

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the

Not to be  
used for  
commercial  
solicitation



Commission or the clerk under this Part for the purpose of commercial solicitation.

#### FORMS

Form

**175.** All applications, returns, statements and other documents to be filed with the Commission shall be filed in the form prescribed by the Commission.

#### POWERS AND DUTIES OF COMMISSION

Powers and  
duties of  
Commission  
1986, c. 33

**176.** Except as otherwise provided in this Part, the provisions of the *Election Finances Act, 1986* relating to the powers and duties of the Commission apply with necessary modifications to the Commission in the administration of this Part.

#### OFFENCES

Offence,  
chief  
financial  
officer

**177.**—(1) The chief financial officer of a registered candidate who contravenes section 169 is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Idem,  
candidate

(2) Where any contravention of this Part that is an offence by virtue of subsection (1) is committed by a chief financial officer of a registered candidate, the candidate for which the chief financial officer acts is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
candidate

**178.** Where the total campaign expenses incurred by a registered candidate and any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 166 for the office subject to election, the registered candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 166.

Offence,  
candidate

**179.** Where the financial statement of a registered candidate shows a surplus and the surplus is not paid over to the clerk as required by section 170, the candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount of the surplus.

Offence,  
corporations,  
trade union

**180.** Every corporation or trade union that contravenes any of sections 143 to 174 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.



**181.** Every individual who contravenes any of sections 143 to 174, except subsection 148 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
individuals

**182.** No person shall obstruct a person making an investigation or examination under this Part or withhold, conceal or destroy or alter any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

Obstruction  
prohibited

**183.** No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the Commission under this Part.

Prohibition,  
false  
statements

**184.** No person shall knowingly give false information to a chief financial officer or other person authorized to accept contributions.

Prohibition,  
false  
information

**185.—(1)** A prosecution for an offence under this Part may be instituted against a trade union in the name of the trade union and, for the purposes of any prosecution, the trade union shall be deemed to be a person.

Prosecution  
of trade  
unions

(2) Any act or thing done or omitted by an officer or agent of a trade union within the scope of the officer's or agent's authority on behalf of the trade union shall be deemed to be an act or thing done or omitted by the trade union.

Trade union  
liable for acts  
of agents

**186.** No prosecution shall be instituted under this Part without the consent of the Commission and no prosecution shall be instituted more than one year after the facts upon which the prosecution is based first came to the knowledge of the Commission.

Consent of  
Commission

**13.** Section 37 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by inserting after "qualified" in the first line "to be elected or".

**14.** Section 38 of the said Act is amended by adding thereto the following subsection:

(1a) A member of council who ceases to hold the qualifications required under clause 37 (a) is disqualified from holding the office of member of council.

Member to  
maintain  
eligibility

**15.—(1)** For the purpose of the 1988 regular elections, the campaign period commences on the day this Act comes into force.

Transition

(2) For the purpose of the 1988 regular elections, a municipality, school board or local board may pass a by-law or reso-

Idem

lution to have Part III apply to the election if the by-law or resolution is passed within sixty days after the coming into force of this Act.



Commence-  
ment

**16.**—(1) This Act, except section 3, comes into force on the day it receives Royal Assent.

Idem

(2) Section 3 comes into force on the 1st day of January, 1991.



Short title

**17.** The short title of this Act is the *Municipal Elections Statute Law Amendment Act, 1988*.

# Bill 106

*(Chapter 33  
Statutes of Ontario, 1988)*

## **An Act to amend the Municipal Elections Act and the Municipal Act**

**The Hon. J. Eakins**  
*Minister of Municipal Affairs*

<i>1st Reading</i>	April 5th, 1988
<i>2nd Reading</i>	May 4th, 1988
<i>3rd Reading</i>	June 8th, 1988
<i>Royal Assent</i>	June 8th, 1988



**Bill 106**

**1988**

**An Act to amend the  
Municipal Elections Act and the Municipal Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

**14a.** No corporation is eligible to vote in any election.

Corporation  
not eligible  
to vote

**2.** Subsection 25 (6) of the said Act is repealed and the following substituted therefor:

(6) Every registered candidate, as defined in section 121 or section 138, is entitled to be furnished by the clerk with two copies of the preliminary list of electors entitled to vote in an election.

Registered  
candidate  
entitled to  
copies

**3.** Subsection 46 (1) of the said Act is amended by inserting after “electors” in the fourth line “allows easy access to persons who have a physical disability or a mobility impairment”.

**4.** Section 52 of the said Act is amended by striking out “11” in the second line and inserting in lieu thereof “10”.

**5.—(1)** Subsection 66 (1) of the said Act is amended by inserting after “day” in the third line “and on the Thursday immediately before polling day”.

(2) Subsection 66 (3) of the said Act is amended by striking out “9” in the first line and inserting in lieu thereof “10”.

(3) Subsection 66 (4) of the said Act is amended by inserting after “necessary” in the second line “shall select locations that allow easy access to persons who have a physical disability or a mobility impairment”.



**6. Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1985, chapter 4, section 9, is repealed and the following substituted therefor:**

Who may  
vote by  
proxy

(1) Any person whose name is entered in the polling list for a polling subdivision or who has obtained a certificate under section 33 may vote by proxy in the polling subdivision.

**7. Section 82 of the said Act is repealed.**

**8. Section 83 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 37, section 14, is repealed and the following substituted therefor:**

#### RECOUNTS

Recount  
officer

**83.—**(1) The clerk of every municipality, at the same time as the clerk appoints officials under section 4, may appoint a person as recount officer.

Disquali-  
fication

(2) No person who is a candidate or who is less than eighteen years of age shall be appointed a recount officer.

Oath

(3) A recount officer shall, before performing any duties, take the oath in the prescribed form.

**9. Sections 84, 85, 86, 87 and 88 of the said Act are repealed and the following substituted therefor:**

Clerk as  
recount  
officer

**84.—**(1) If a recount officer is not appointed under subsection 83 (1), subject to subsections (2) to (5), the clerk of a municipality is the recount officer for elections within the municipality or any part of it.

Recount  
officer,  
regional  
chairman

(2) The clerk of the area municipality with the greatest number of electors is the recount officer for the election of the chairman of a regional municipality.

Recount  
officer, police  
village

(3) The clerk of the municipality in which a police village is located is the recount officer for the election of the trustees of the police village.

Idem

(4) If the police village is located in two or more municipalities, the clerk of the municipality having the largest number of electors in the police village is the recount officer for the election of the trustees.

Recount  
officer,  
school  
trustees

(5) The returning officers of municipalities that hold elections for school trustees under the *Education Act* are recount officers for the election of the school trustees.

(6) Where the recount officer of a municipality has participated in the actual counting of the ballots for a polling subdivision in an election or, for any reason, is unable to conduct a recount arising as a result of the election, the recount officer shall immediately appoint a person to act as the recount officer for that election who is not disqualified under subsection 83 (2).

Recount  
officer  
replacement

(7) A person need not be appointed under subsection (6) if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the recount officer participated in the actual counting of the ballots.

Exception

**85.—**(1) The recount officer is responsible for the proper preparation for and conduct of a recount in the election and, for this purpose, shall direct the training of persons appointed under this section and supervise their work.

Duty of  
recount  
officer

(2) The recount officer may appoint assistant recount officers and may provide for such clerical and other assistance as is necessary to conduct a recount.

Assistants

(3) No person shall be appointed under this section who,

Disqualifi-  
cation

(a) is a candidate;

(b) is less than eighteen years of age; or

(c) has participated in the actual counting of the ballots for a polling subdivision in the election.

(4) Clause (3) (c) does not apply if the recount does not involve the examining and counting of ballots for the polling subdivision in respect of which the person who is to be appointed an assistant recount officer participated in the actual counting of the ballots.

Exception

(5) The recount officer may in writing delegate to the assistant recount officers such rights and duties in relation to the preparation for and conduct of a recount as the recount officer considers necessary, but such delegation does not preclude the continued exercise of those rights and performance of those duties by the recount officer.

Delegation  
by recount  
officer

(6) The recount officer may appoint persons to aid in maintaining peace and order at the recount.

Other  
appointments

(7) Every recount officer, assistant recount officer, scrutineer and any other person authorized to attend and serve at a

Oath

recount shall, before performing any duties, take the oath in the prescribed form.

Who may  
administer  
oaths

(8) The recount officer may administer any oath required in relation to a recount, and assistant recount officers may administer any such oath except an oath to be taken by the recount officer.

Remuner-  
ation and  
expenses

(9) The municipality shall pay to persons appointed under this section reasonable remuneration and the expenses incurred in attending the recount, but if the recount has been held at the request of a school board or a local board or at the request of a candidate for election to a school board or local board, the school board or local board, as the case may be, shall pay the remuneration and expenses.

Certification  
of expenses

(10) The expenses under subsection (9) shall be paid out only upon presentation of a certificate signed by the clerk of the municipality verifying the amount payable.

Tie votes,  
recount

**86.—(1) If,**

- (a) two or more candidates nominated for the same office have an equal number of votes and both or all of the candidates cannot be declared elected to the office; or
- (b) the votes for the affirmative and negative on a by-law or question are equal,

the recount officer shall, after the tied vote has been publicly announced, immediately appoint a time and place to hold a recount of the votes cast for those candidates or on the by-law or question.

When  
recount to  
be held

(2) The time appointed by the recount officer for a recount under subsection (1) shall be no later than seven days after the declaration of the results of the election under subsection 79 (2) or 79 (3).

Where vote  
is close

**86a.—(1) If the number of votes separating a candidate who was not declared elected and a candidate who was declared elected or, for an office to which more than one person may be elected, who was declared elected with the least number of votes, is less than one half of one vote for each polling subdivision in the election for that office, or less than ten votes, whichever is greater, the results shall be included in the statement required under subsection 79 (2) or 79 (3).**

(2) If subsection (1) applies and if a candidate who was not declared elected so requests in writing, the recount officer shall hold a recount.

Recount on request

(3) A request for a recount under subsection (2) shall be made to the recount officer not later than seven days after the declaration of the results of the election under subsection 79 (2) or 79 (3).

When request for recount to be made

(4) Upon receiving a request for a recount under this section, the recount officer shall appoint a time and place for the recount.

Time and place for recount

(5) The time appointed by the recount officer for a recount under subsection (4) shall be no earlier than ten days and no later than twenty days after the request for the recount is received.

When recount to be held

**86b.**—(1) Following an election for the members of the council of a municipality, regional municipality or metropolitan municipality or of a school board or of a local board, where a recount of the votes for the office or for the affirmative or negative on any by-law or question is considered to be in the public interest, the council, school board or local board, as the case may be, may pass a resolution requiring the recount officer to hold a recount.

Recount resolution

(2) A resolution for a recount under subsection (1) shall be passed no later than thirty days after the declaration of the results of the election under subsection 79 (2) or 79 (3).

When resolution to be passed

(3) If a resolution for a recount is passed under subsection (1) within the time period set out in subsection (2), the recount officer shall appoint a time and place for the recount.

Time and place for recount

(4) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days after the passing of the resolution under subsection (1).

When recount to be held

**87.**—(1) If, in any election, an elector has reasonable grounds for believing that,

Application for recount by elector

- (a) the votes have been improperly counted or any ballot has been improperly rejected;
- (b) an incorrect statement of the number of votes for any candidate or for or against any by-law or question has been made; or
- (c) the votes have been improperly added up,



the elector may apply to a judge of the District Court of the county or district in which the municipality or part thereof or the administrative or head office of the school board or local board is situate for a determination whether a recount should be held.

Affidavit and  
deposit to  
accompany  
application

(2) An application for a recount under subsection (1) shall be commenced no later than thirty days after the declaration of the results of the election under subsection 79 (2) or 79 (3) and shall be accompanied by,

- (a) an affidavit or affidavits setting out the grounds for the recount and the facts in support of those grounds; and
- (b) a deposit in the sum of \$100 as security for the costs in connection with the application.

Contents of  
affidavit

(3) An affidavit under clause (2) (a) shall be confined to facts within the personal knowledge of the person making the affidavit or to other evidence that this person could give if testifying as a witness in court.

Form of  
deposit

(4) A deposit under clause (2) (b) shall be in the form of cash or in the form of a money order or certified cheque made payable to the local registrar of the District Court, or in any combination thereof.

Parties to  
be served

(5) Copies of the notice of application, the application for a recount and affidavits in support of the application shall be served by the applicant,

- (a) where the application concerns an election to office, upon each candidate for that office; and
- (b) upon the recount officer.

Disposition  
of  
application,  
etc.

(6) The judge, if satisfied that there are sufficient grounds for a recount, shall order that a recount be held by the recount officer and may determine which ballot boxes, if any, shall be opened for the purpose of the recount.

Where  
recount  
ordered

(7) If the judge has ordered a recount, the judge shall immediately notify the recount officer in writing and the recount officer shall appoint a time and place to hold the recount.

When  
recount to  
be held

(8) The time appointed by the recount officer for a recount shall be no earlier than ten days and no later than twenty days



following the date the recount officer receives the notice from the judge.

(9) The costs with respect to a recount conducted under this section are in the discretion of the judge ordering the recount who may order by whom, to whom and in what manner the costs shall be paid. Costs

**88.**—(1) The recount officer shall give at least six days notice in writing of the time and place of the recount to, Notice of recount

- (a) the candidate who requested the recount, the council or school board or local board which passed the resolution for the recount, or the elector who applied to the judge for the recount, as the case may be;
- (b) the candidates for the office which is the subject of the recount;
- (c) if the recount officer is not the returning officer of the municipality, the returning officer of the municipality; and
- (d) if the recount concerns the election of chairman of a regional municipality, the trustees of a police village or the members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality.

(2) The recount officer shall attend the recount and bring the ballot boxes and all documents relating to the election. Attendance of recount officer

(3) If the recount officer is not the returning officer of the municipality, the returning officer of the municipality, or a person appointed by the returning officer, shall attend the recount and bring the ballot boxes and all documents relating to the election. Where recount officer not returning officer

(4) If the recount concerns the election of chairman of a regional municipality or of trustees of a police village or of members of a school board, the clerk of any other municipality who was the returning officer for the vote to be recorded in that clerk's municipality, or a person appointed by the clerk, shall attend the recount and bring the ballot boxes and all documents relating to the election. Regional chairman, police village and school board elections

(5) Each candidate for an office to which the recount relates and the elector, if any, who applied for the recount are entitled to be present and to be represented by counsel and to Who may be present

have present a scrutineer appointed for that purpose, and, where the recount relates to a by-law or question, such persons as the council may appoint as scrutineers are entitled to be present, but no other person, except with the permission of the recount officer, is entitled to be present at the recount.

Application  
of certain  
provisions

(6) Subsections 4 (8) and (10) and sections 6 and 7 apply with necessary modifications to scrutineers appointed under subsection (5).

What ballots  
involved in  
recounts

**88a.**—(1) If a recount relates to the election of a candidate, the recount shall be of the votes cast,

- (a) where subsection 86 (1) applies, for the two or more candidates who have an equal number of votes;
- (b) where subsection 86a (1) applies, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected and for the defeated candidate or candidates who received enough votes for the same office to fall within the margin of votes prescribed by that subsection; and
- (c) in all other cases, for the candidate declared elected when only one is to be elected or, in the case of an office to which more than one is to be elected, for the candidate who received the lowest number of votes of those declared elected by the returning officer and for the defeated candidate who received the highest number of votes for the same office.

Recount of  
votes cast  
for other  
candidates

(2) Notwithstanding subsection (1), the recount officer may conduct a recount of the votes cast for any other candidate whose election or right to any other office may be affected by the recount conducted under subsection (1).

Procedure at  
recount

**88b.**—(1) At the time and place appointed for the recount, and in the presence of those persons who are entitled to be present and who have attended, the recount officer shall add the votes from the statements returned to the returning officer by the deputy returning officers, or shall count the ballots received by the returning officer from the deputy returning officers and the number of votes counted at the election, or both, as the recount officer considers appropriate, and for this purpose shall open the sealed envelopes containing,

- (a) the ballots that were not objected to and were counted;
- (b) the ballots that were objected to but were counted;
- (c) the rejected ballots;
- (d) the cancelled ballots;
- (e) the ballots that were used but were unmarked;
- (f) the declined ballots; and
- (g) the unused ballots.

(2) Subject to sections 88c and 88d, the recount officer, in conducting the recount, shall determine the validity of ballots, and shall verify or correct the statement of the vote for each polling subdivision.

Verification  
of statement  
of the vote

**88c.**—(1) A candidate, a representative of the candidate or a scrutineer who objects to the validity of a ballot or to the counting of votes in any ballot may request that the recount officer make an application to a judge of the District Court for an order determining the validity of the ballot.

Application  
to judge

(2) If the recount officer fails to make an application within five days of a request being made under subsection (1), the party making the request may apply directly to a judge of the District Court.

Direct  
application

(3) No hearing under subsection (1) shall be held until the recount officer has complied with subsection 88b (2).

When  
hearing to  
be held

(4) If an application is made under subsection (1), the recount officer shall,

Procedure  
where  
application  
made

- (a) write the number of the polling subdivision on the back of and initial any disputed ballots that are the subject of the application and seal them in a separate envelope clearly marked so as to indicate its contents;
- (b) give at least six days notice in writing of the time and place of the hearing of the application to the parties to the recount; and
- (c) make suitable arrangements for the safekeeping of any ballots that are not the subject of the appli-

cation and any documents relating to the election that are not relevant to the application.

Attendance  
of recount  
officer at  
hearing

(5) The recount officer shall attend the hearing of the application and bring the envelope containing the disputed ballots that are the subject of the application and any documents relating to the election that are relevant to the application.

Procedure  
at hearing

(6) The judge, in the presence of the persons entitled to be present at the recount and who have attended the hearing, shall determine the validity of the ballot or to the counting of votes in any ballot and for this purpose shall open the sealed envelope containing the disputed ballots.

Distin-  
guishing  
disputed  
ballots

(7) If a party to the application requests the judge to do so, the judge shall initial any ballots the validity of which, notwithstanding any order to the contrary made by the judge under this section, is disputed by the party and seal the disputed ballots in a separate envelope clearly marked so as to indicate its contents.

Procedure on  
completion  
of hearing

(8) Upon completion of the hearing, the judge shall make an order determining the validity of the ballot and shall,

- (a) advise the persons present of the order;
- (b) except as provided by subsection (7), seal the disputed ballots in their original envelope; and
- (c) return the envelope referred to in clause (b), along with any documents relating to the election that were examined during the course of the hearing, to the custody of the recount officer.

Judge to  
give order  
to recount  
officer

(9) The judge shall give a certified copy of the order to the recount officer unless, within five days following the hearing, the judge receives a notice of appeal under section 88j.

Recount  
officer to  
complete  
recount

(10) Upon receipt of the judge's order, the recount officer shall complete the recount.

Costs of  
application

(11) Subject to subsection (12), the costs of the application shall be borne by the municipality, school board or local board to which the recount relates.

Idem

(12) If the judge finds that any objection is frivolous or vexatious, the judge may order that the costs of the application be paid by the person who made the objection.



(13) Upon the expiry of the time for appeal from a decision of the judge, if no appeal has been taken, the judge shall return the envelope described in subsection (7) to the custody of the recount officer.

Where no appeal, envelope to be returned

**88d.** Notwithstanding section 88c, if a party to the recount requests the recount officer to do so, the recount officer shall write the number of the polling subdivision on the back of and initial any disputed ballots and seal them in a separate envelope clearly marked so as to indicate its contents.

Distin-  
guishing  
disputed  
ballots

**88e.**—(1) Upon completion of the recount, the recount officer shall,

Procedure on  
completion  
of recount

- (a) announce the result to the persons present at the recount; and
- (b) except as provided in section 88d, seal the ballots in their original envelopes and the original statements in a separate envelope clearly marked so as to indicate its contents.

(2) The recount officer shall certify in writing the result of the recount, unless, within five days following the completion of the recount, the recount officer receives a notice of appeal under section 88j.

Certification  
by recount  
officer

(3) Following certification of the result of the recount, the returning officer shall declare the candidate or candidates, as the case may be, having the greatest number of votes to be elected or certify to the council the result of the vote with respect to a by-law or question, as applicable.

Declaration  
of result by  
returning  
officer after  
recount, etc.

**88f.**—(1) In the case of a tied vote for candidates for any office for which one person only is to be elected, or for which the holding of any other office is to be determined as a result of a recount, the successful candidate shall be determined by lot conducted by the recount officer.

Tied votes

(2) The lot shall be conducted by placing the names of the candidates on equal size pieces of paper in a box, and the name drawn by the recount officer shall be the successful candidate.

Method of  
conducting  
lot

**88g.** The costs of the recount, unless otherwise ordered by a judge, shall be borne by the municipality, school board or local board to which the recount relates.

Costs of  
recount

**88h.**—(1) Upon the expiry of the time for appeal from a decision of the recount officer, if no appeal has been taken,

If no appeal,  
envelopes to  
be returned



the recount officer shall return the envelopes described in section 88d and clause 88e (1) (b) to the custody of the appropriate clerk or returning officer.

Documents  
not required  
on appeal

(2) If an appeal is taken from the decision of the recount officer on the recount, the recount officer shall return the envelopes of ballots and the original statements of the vote described in clause 88e (1) (b) that are not required for the appeal to the custody of the appropriate clerk or returning officer.

Right to sit  
pending  
recount

**88i.**—(1) A candidate declared elected is entitled to sit on the council, school board or local board notwithstanding that a request or application for a recount has been filed or a resolution for a recount has been passed, but where the recount determines that some other person was elected, that other person is, notwithstanding that an appeal is pending, entitled to sit and vote until the appeal is disposed of.

Decisions  
not affected

(2) A decision of a council, school board or local board reached with the participation of a member who is subsequently declared not to be entitled to sit on the council, school board or local board is not affected by that participation.

#### APPEAL FROM DECISION OF JUDGE OR RECOUNT OFFICER

Appeal from  
decision of  
judge or  
recount  
officer

**88j.**—(1) Any party may appeal to the Divisional Court from the decision of the judge on the application or of the recount officer on the recount, as the case may be, by giving written notice not more than five days following the completion of the hearing or the recount to the other parties concerned and to the judge or the recount officer and the notice may limit the appeal to specified disputed ballots.

Service  
of notice

(2) The notice shall be served upon the other parties personally or upon the solicitor who acted for the party or in the manner that the judge of the Divisional Court may direct.

Documents  
to be  
forwarded

(3) The judge or recount officer shall forward to the Registrar of the Supreme Court by registered mail,

- (a) the notice of appeal;
- (b) a certificate showing the findings of the judge or recount officer on the ballots or statements in dispute;
- (c) if the appeal is limited to specified disputed ballots, the ballots or statements of the vote that are the

subject of the appeal in the envelopes described in subsection 88c (7) and section 88d; and

- (d) if the appeal is not limited, all of the ballots, in the envelopes referred to in clause 88c (8) (b) or 88e (1) (b).

(4) The judge or recount officer shall await the result of the appeal before preparing the certificate under subsection 88c (9) or 88e (2). Certificate to be issued after appeal

(5) The judge or recount officer shall, upon request, allow each party to make a copy of the order or certificate, as the case may be, before it is forwarded to the Registrar. Copy of certificate

(6) On receipt of the ballots, notice and statement, the Registrar shall immediately obtain an appointment from the Divisional Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed. Appointment for hearing

(7) One judge of the Divisional Court shall determine the objection pertaining to, or count again, the ballots or such of them as are the subject of appeal, or review the re-addition, as the case may be, and shall immediately certify in writing the decision of the court to the judge of the District Court or to the recount officer. Determination by Divisional Court

(8) The judge or recount officer, in compliance with the decision of the Divisional Court, shall certify the result without delay. Certificate to reflect decision

**10. Subsection 103 (2) of the said Act is repealed.**

**11. Section 121 of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 37, section 25 and amended by 1985, chapter 4, section 10, is repealed.**

**12. The said Act is further amended by adding thereto the following Parts:**

## PART II

**121.—(1) In this Part,**

Definitions

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and con-

tributions of goods and services to the registered candidate, but does not include,

- (a) audit and accounting fees,
- (b) interest on loans under section 127,
- (c) an expense incurred in holding a fund-raising function referred to in section 126,
- (d) an expense incurred for victory parties held and appreciation notices published after polling day,
- (e) an expense relating to a recount in respect of the election, and
- (f) an expense relating to an action commenced under section 106;

“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election,
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required, or
  - (iv) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and ending,

- (c) in the case of a regular election, on the 31st day of March in the year following the election year, or
- (d) in the case of a new election, 135 days after polling day;

“contribution” means a contribution made to a registered candidate or representative of a registered candidate for pur-

poses of the election of the registered candidate at the next election, but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour, and
- (b) any service voluntarily performed for a registered candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual's employer, compensation in excess of what the individual would normally receive during the period the service was performed;

"municipality" means a city, town, village, police village, township, regional municipality or metropolitan municipality;

"registered candidate" means a candidate registered under section 122;

"trade union" means a trade union as defined in the *Labour Relations Act* or the *Canada Labour Code* that holds bargaining rights for employees in Ontario to whom those Acts apply and includes any central, regional or district labour council in Ontario.

R.S.O. 1980,  
c. 227  
R.S.C. 1970,  
c. L-1

(2) Where a corporation is associated with another corporation under section 256 of the *Income Tax Act* (Canada) and where one or both of those associated corporations does not or do not carry on an active business as that expression is defined in paragraph 125 (6) (d) of the *Income Tax Act* (Canada), the two associated corporations shall be considered as a single corporation for the purposes of this Part.

Associated  
corporations  
R.S.C. 1952,  
c. 148

## REGISTRATION

**122.**—(1) Every person who proposes to be a candidate shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the clerk of the municipality who is responsible for the conduct of the election a notice of registration in the prescribed form.

Registration  
of candidate

(2) In the case of a new election, the notice of registration referred to in subsection (1) shall be filed with the clerk no earlier than the day on which,

Registration  
in new  
elections

- (a) an order to hold a new election is given in any judicial proceedings;



- (b) the council of the municipality passes a by-law to hold a new election;
- (c) the clerk receives from the secretary of the school board notice that a new election is required; or
- (d) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and no later than nomination day.

When  
candidate  
registered

(3) A person who files a notice of registration under subsection (1) becomes a registered candidate on the day of filing.

No contri-  
butions to  
unregistered  
candidate

(4) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

Register

(5) The clerk shall keep a register of every person who has filed a notice of registration under subsection (1) setting out,

- (a) the date that the registered candidate is duly nominated under section 36;
- (b) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (c) the full name and address of the registered candidate;
- (d) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (e) the full names and addresses of the auditor and the chief financial officer, if any, of the registered candidate;
- (f) the full names and addresses of all persons authorized by the registered candidate to accept contributions;
- (g) the name and address of every chartered bank, trust company or other financial institution in Ontario



that is used by or on behalf of the registered candidate for the deposit of any contributions;

- (h) the full names and addresses of the persons, if any, responsible for making the deposits referred to in clause (g); and

- (i) the date of registration.

(6) A notice of registration under subsection (1) may be filed with the clerk by registered mail in which case it shall be deemed to be filed on the day it is mailed. Effective date of registration

(7) The campaign period with respect to a registered candidate shall be deemed to expire, Where registered candidate withdraws, etc.

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;
- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of death,

and the registered candidate or the chief financial officer shall file with the clerk the statement referred to in section 132.

(8) If the information referred to in subsection (5) is altered, the registered candidate shall immediately notify the clerk in writing of the alteration and, upon receipt of the notice, the clerk shall vary the register accordingly. Variation of register

#### CHIEF FINANCIAL OFFICERS

**123.—**(1) Every person who proposes to be a candidate may appoint a chief financial officer before or after filing the notice of registration with the clerk. Chief financial officer

(2) If the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the clerk of the full name and address of the new chief financial officer. Replacement

(3) The chief financial officer shall be responsible for ensuring that, Duties of chief financial officer

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in the appropriate accounts;
- (c) proper receipts are completed;
- (d) the financial statements required under section 132 and the auditor's report on the statements are filed with the clerk;
- (e) contributions consisting of goods or services are valued and recorded; and
- (f) proper direction is given to persons authorized to incur expenses.

Where  
no chief  
financial  
officer

(4) If a registered candidate has not appointed a chief financial officer, the registered candidate is responsible for the duties set out in subsection (3).

#### CONTRIBUTIONS

Contributions

**124.**—(1) Contributions to registered candidates may be made only by individuals, corporations and trade unions and may be made only during the campaign period.

Contributions  
to be made  
in campaign  
period

(2) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept contributions at any time other than during the campaign period.

How contri-  
butions of  
money to be  
made

(3) Money contributions to registered candidates in amounts in excess of \$25 shall only be made by,

- (a) a cheque having the name of the contributor legibly printed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Deposit of  
funds

(4) All moneys accepted by or on behalf of a registered candidate shall be paid into an account registered with the clerk under subsection 122 (5).

(5) If the registered candidate or the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the registered candidate or the chief financial officer shall, within thirty days after so learning and upon obtaining the contributor's copy of the receipt issued under section 125 in respect of that contribution, return the contribution or an amount equal to the sum contributed.

Refund of contributions

(6) Any contributions not returned to the contributor under subsection (5) or any anonymous contribution received by a registered candidate shall not be used or spent, but shall be paid over to the clerk and become part of the general funds of the municipality.

Anonymous contributions payable to municipality

(7) No individual, corporation or trade union shall make a contribution in money, goods and services to any registered candidate which in total exceeds \$750 in value during any campaign period.

Limitation on contributions

(8) Any moneys used for an election campaign by a registered candidate out of the registered candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this section, but the limit on the total amount of contributions established under subsection (7) does not apply in respect of those funds.

Registered candidate's funds, spouses's funds

(9) Every registered candidate shall submit to the clerk at the same time as the financial statement is filed under section 132, a statement in writing setting out campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the registered candidate, together with all receipts and claims for those expenses.

Statement to be submitted to clerk

**125.**—(1) No individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to that individual, corporation or trade union.

Contributor to contribute only funds belonging to contributor

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No registered candidate and no individual, corporation or trade union on behalf of the registered candidate shall solicit or accept any contribution contrary to subsection (1).

Prohibition

(4) No registered candidate shall accept funds from,

No funds from political parties, etc.

1973-74,  
c. 14 (Can.)

(a) a federal political party registered under the *Canada Elections Act* or any federal constituency association or registered candidate at a federal election endorsed by such federal political party; or

1986, c. 33

(b) a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act, 1986*.

Receipts

(5) A registered candidate shall issue receipts for every contribution accepted.

Group contri-  
butions

(6) A contribution to a registered candidate made through an unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution.

Application  
to amounts  
making up  
contribution

(7) The amounts making up a contribution under subsection (6) that are attributable to an individual, corporation or trade union are contributions of that individual, corporation or trade union for the purposes of subsection 124 (7).

Receipt of  
excess contri-  
butions  
prohibited

(8) No registered candidate and no individual, corporation or trade union acting on behalf of the registered candidate shall solicit or accept any contributions in excess of the limits imposed under subsection 124 (7).

Restriction  
on contri-  
butions

(9) No registered candidate shall directly or indirectly solicit or accept contributions from,

(a) an individual normally resident outside Ontario;

(b) a corporation that does not carry on business in Ontario; or

(c) a trade union other than a trade union as defined in this Part.

Trade  
unions,  
contributions

(10) Contributions of not more than 15 cents per month by a member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of section 124 and this section, but any amount contributed to a registered candidate shall be deemed to be a contribution from the trade union.

Record of  
contributions  
to be kept

(11) Every registered candidate shall keep a record of all contributions in excess of \$25 or having a value in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contribu-



tions from a single source that in the aggregate exceed \$100, the name and address of the contributor.

**126.**—(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held. Definition

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period. When fund-raising functions to be held

(3) The gross income from a fund-raising function shall be recorded and reported to the clerk by the registered candidate or the chief financial officer. Income to be reported

(4) If a charge is made for a fund-raising function by the sale of tickets or otherwise, any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate, be considered not to be a contribution. Where charge may be considered not a contribution

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of current market value shall be considered a contribution. Where amounts to be considered contributions

(6) If a meeting is held on behalf of or in relation to the affairs of a registered candidate and money is given in response to a general collection of money solicited from the persons in attendance at the meeting, no amount shall be given anonymously by any person in excess of \$10 and the amounts so given shall be considered not to be contributions, but the gross amount collected shall be recorded and reported to the clerk by the registered candidate or the chief financial officer. Collection of money at meetings

#### BORROWING

**127.**—(1) A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the registered candidate and reported to the clerk in the financial statement filed under subsection 132 (1). Borrowing

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1). Limitation



## LOAN GUARANTEE

Guarantee  
of loan to  
registered  
candidates  
prohibited

**128.**—(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate.

Exception

(2) An individual, corporation or trade union that is eligible to make a contribution may guarantee any loan referred to in subsection 127 (1).

Guarantee as  
contribution

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 127 (1) is considered to be a contribution under section 124.

## CAMPAIGN EXPENSES

Authority  
to incur  
campaign  
expenses

**129.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the registered candidate by persons authorized by the registered candidate.

Certificate  
of authority

(2) Every person authorized to incur a campaign expense shall, upon request, show a certificate, in the prescribed form, signed by the registered candidate as proof of the authority.

Record of  
campaign  
expenses

(3) Every registered candidate shall keep a record of all campaign expenses.

Limitation  
on campaign  
expenses

(4) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation, trade union or unincorporated association acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed the aggregate amount of \$5,500 plus \$0.50 per elector.

Idem

(5) Subject to subsection (6), the total campaign expenses incurred by a registered candidate in an election for the office of,

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality if this office is required to be filled by the vote of the electors of an area municipality; or

- (c) member of a school board or of a local board whose members are to be elected at elections required to be conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation, trade union or unincorporated association acting on behalf of the registered candidate during the period commencing with the date of registration and ending on polling day in the election shall not exceed the amount of \$3,500 plus \$0.50 per elector.

(6) If the municipality or the school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of the wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Limitation  
on campaign  
expenses,  
ward  
elections

(7) For the purpose of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

Determi-  
nation of  
number of  
electors by  
returning  
officer

(8) After determining the number of electors under subsection (7), the clerk shall calculate, for each office, the maximum amount of campaign expenses that may be incurred by a registered candidate under subsection (4), (5) or (6), as applicable, certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or send by registered mail a copy of the certificate to each registered candidate for the office.

Calculation  
and certifi-  
cation  
of maximum  
campaign  
expenses by  
returning  
officer, etc.

(9) Certification of the maximum amount of total campaign expenses that may be incurred by a registered candidate for the office by the clerk under subsection (8) shall be conclusive evidence of that fact and shall not be open to challenge.

Certificate  
conclusive

**130.**—(1) Every individual, corporation or trade union that has any claim for payment in relation to a campaign expense shall submit the claim after polling day to the registered candidate who incurred the expense,

Time for  
submission of  
claims for  
payment

- (a) in the case of a regular election, no later than the 31st day of March in the year following the election year; or

- (b) in the case of a new election, no later than 135 days after polling day.

Payment of  
expenses by  
registered  
candidate

(2) Every payment of a campaign expense shall be made by the registered candidate or the chief financial officer who incurred or on whose behalf the campaign expense was incurred and, except where the campaign expense is less than \$25, a receipt shall be obtained setting out the particulars and proof of payment.

Method of  
payment

(3) Payment of any campaign expense shall be made by cheque drawn on an account registered with the clerk under subsection 122 (5).

Disputed  
claims

(4) If the registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

#### AUDITORS

Appointment  
of auditor

**131.—**(1) If contributions received by a registered candidate exceed \$10,000 or expenses incurred by the registered candidate exceed \$10,000 during the campaign period, the registered candidate shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately inform the clerk of the full name and address of the auditor.

R.S.O. 1980,  
c. 405

Report of  
auditor

(2) The auditor shall make a report to the registered candidate or the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 132, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards.

Change of  
auditors

(3) If an auditor appointed under subsection (1) ceases to hold office, ceases to be qualified under subsection (1) or becomes ineligible under subsection (4), the candidate shall immediately appoint another auditor licensed under the *Public Accountancy Act* and shall immediately notify the clerk of the full name and address of the auditor.

R.S.O. 1980,  
c. 405

Persons not  
eligible to be  
auditors

(4) No election official and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the registered candidate.

Report of  
auditor

(5) If,

- (a) the auditor has not received from the registered candidate or the chief financial officer all the information and explanation that is required to make the report; or
- (b) proper accounting records have not been kept by the registered candidate or the chief financial officer,

the auditor shall make a statement to that effect in the report made under subsection (2).

(6) An auditor appointed under subsection (1) shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate. Right of access

(7) The registered candidate or the chief financial officer shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (2). Co-operation required

#### STATEMENTS, REPORTS AND STATUTORY DECLARATIONS

**132.**—(1) Subject to subsections (3) and (4), every registered candidate shall file with the clerk who was the returning officer in the election a financial statement and auditor's report in the prescribed form which shall contain, Filing of financial statement

- (a) all income received and expenses incurred in the campaign period;
- (b) a list of contributions in the form of goods or services and the value of them received by or on behalf of the registered candidate during the campaign period;
- (c) the name, address and contribution of each individual, corporation or trade union that made a contribution, whether in the form of money, goods or services, if the contribution was more than \$100; and
- (d) a list of campaign expenses, paid and outstanding, incurred in a campaign period and a statement of disputed claims.

(2) The financial statement and auditor's report under subsection (1) shall be filed, Idem



- (a) in the case of a regular election, no later than the 30th day of June in the year following the election year; or
- (b) in the case of a new election, no later than 225 days after polling day.

Where report  
sufficient

(3) If the contributions received by or on behalf of a registered candidate do not exceed \$10,000 or expenses incurred by or on behalf of the registered candidate do not exceed \$10,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a report in the prescribed form containing the information required in subsection (1).

Where  
statutory  
declaration  
sufficient

(4) If the contributions received by or on behalf of a registered candidate do not exceed \$1,000 and expenses incurred by or on behalf of such registered candidate do not exceed \$1,000, the registered candidate may, instead of filing the financial statement required under subsection (1), file a statutory declaration in the prescribed form to that effect.

Clerk  
to prepare  
statement

(5) After the time for the filing of a statement, report or declaration under subsection (1), (3) or (4) has expired, the clerk shall immediately prepare a statement in the prescribed form disclosing,

- (a) the information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Demand  
to candidate  
to file

(6) After the time prescribed for making full disclosure under subsection (1) has expired, the clerk shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement, report or declaration, a notice in the prescribed form demanding that the registered candidate file a statement, report or declaration within thirty days from the date of the notice.

Contents  
of demand  
notice

(7) The notice under subsection (6) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not elected, shall be ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the



statement, report or declaration within thirty days of the date of the notice.

(8) The clerk shall post a notice of non-compliance in the prescribed form in two conspicuous places in the municipality and, where there is a newspaper having general circulation in the municipality, by publishing the notice in such newspaper.

Publishing  
notice of  
non-com-  
pliance

(9) After the thirty day period for the filing of a statement, report or declaration has expired, the clerk shall immediately prepare a supplementary statement in the prescribed form disclosing,

Clerk  
to prepare  
supple-  
mentary  
statement

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement, report or declaration under this section, within the thirty day period allowed by subsection (6),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

**133.—(1)** If a registered candidate,

Ineligibility  
respecting  
future  
elections

- (a) fails to file a financial statement, a report or statutory declaration as required by section 132 within thirty days of the date of the notice sent under subsection 132 (6);
- (b) files a financial statement, a report or statutory declaration as required by section 132 that is either incorrect or does not comply with section 132 and fails to file a correction statement, report or declaration, as the case may be, within thirty days from the date that the clerk files the statement under subsection 132 (5); or
- (c) incurs campaign expenses in excess of the amount permitted under section 129,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has

Forfeiture  
of office

exceeded the amount referred to in clause (1) (c), the clerk shall within five days of the default notify in writing the registered candidate and the council, school board or local board, as the case may be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

Ineligibility  
respecting  
future  
elections

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

#### ACCESS TO DOCUMENTS

Inspection of  
documents

**134.**—(1) Documents, financial statements, reports and declarations filed with the clerk under this Part are public records and may be inspected by any person upon request at the office of the clerk during normal office hours.

Extracts and  
copies

(2) Any person may make extracts from the statements, reports or declarations referred to in subsection (1) and is entitled to copies thereof upon payment for the preparation of the copies at such rate as the clerk charges for the preparation of copies of other documents.

Not to be  
used for  
commercial  
solicitation

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the clerk under this Part for the purposes of commercial solicitation.

Section  
applicable to  
certain  
statements

(4) This section applies to a statement prepared by the clerk that is required to be submitted to the council of the municipality, the school board or local board under subsection 132 (5) or (9).

#### OFFENCES

Offence by  
corporation  
or trade  
union

**135.**—(1) A corporation or trade union that contravenes any of sections 122 to 134 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offence

(2) An individual who contravenes any of sections 122 to 134, except subsection 124 (7), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

(3) If the total campaign expenses incurred by a registered candidate or any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 129 for the office subject to election, the candidate, in addition to the fine set out in subsection (2), is liable to a fine equal to the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 129.

Additional  
penalty

**136.** No prosecution shall be instituted for a contravention of any of sections 122 to 134 more than one year after the facts upon which the prosecution is based first came to the knowledge of the informant.

One year  
limitation

**137.**—(1) No person shall obstruct a person making an investigation or examination under this Act or withhold or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

Obstructing  
investigation,  
etc.

(2) No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the clerk under section 132 or 133.

False  
statements

### PART III

**138.**—(1) In this Part,

Definitions

“broadcasting undertaking” means a broadcasting undertaking as defined in section 2 of the *Broadcasting Act* (Canada);

R.S.C. 1970,  
c. B-11

“campaign expense” means an expense incurred for goods or services in relation to an election by or on behalf of a registered candidate for use in whole or in part for the purpose of the election of the registered candidate at the next election including the value of goods held in inventory, fees or expenses for services for any registered candidate and contributions of goods and services to the registered candidate but not including,

- (a) auditor’s and accounting fees,
- (b) interest on loans authorized under section 162,
- (c) an expense incurred in holding a fund-raising function referred to in section 153,
- (d) an expense incurred for victory parties and appreciation notices published after polling day,

- (e) an expense relating to a recount in respect of the election,
- (f) an expense relating to an action commenced under section 106, and
- (g) other expenses not of partisan value that are set out in guidelines provided by the Commission;

“campaign period” means the period commencing on,

- (a) in the case of a regular election, the 1st day of January of an election year, or
- (b) in the case of a new election, the day on which,
  - (i) an order to hold a new election is given in any judicial proceedings,
  - (ii) the council of the municipality passes a by-law to hold a new election,
  - (iii) the clerk receives from the secretary of a school board notice that a new election is required, or
  - (iv) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and ending,

- (c) in the case of a regular election, on the 31st day of March in the year following the election year, or
- (d) in the case of a new election, 135 days after polling day;

1986, c. 33

“Commission” means the Commission on Election Finances established by the *Election Finances Act, 1986*;

“contribution” means a contribution made to a representative of a registered candidate but does not include,

- (a) any goods produced for a registered candidate by voluntary unpaid labour,
- (b) any service voluntarily performed for a candidate by an individual if the individual does not receive from any person or trade union, under an arrangement with the individual’s employer, compensation in



excess of what the individual would receive during the period the service was performed, and

- (c) any moneys, goods or services solicited by or donated to a registered candidate for purposes other than those set out in subsection 143 (3);

“municipality” means a city, town, village, police village, township, regional municipality or metropolitan municipality;

“news reporting done in good faith” means interviews, commentaries or other works prepared for and published by any newspaper, magazine or other periodical publication or broadcast on the facilities of any broadcasting undertaking without charge to any candidate registered under this Part;

“outdoor advertising facilities” means outdoor facilities provided by any person that is in the business of providing these facilities on a commercial basis for advertising purposes but does not include radio, television, newspaper, magazine or other periodical publications;

“registered candidate” means a candidate registered under section 143;

“trade union” has the same meaning as in Part II.

(2) Where a corporation is associated with another corporation under section 256 of the *Income Tax Act* (Canada) and where one or both of those associated corporations does not or do not carry on an active business as that expression is defined in paragraph 125 (6) (d) of the *Income Tax Act* (Canada), the two associated corporations shall be considered as a single corporation for the purposes of this Part.

Associated corporations  
R.S.C. 1952,  
c. 148

#### APPLICATION

**139.**—(1) Notwithstanding Part II, the council of a municipality may pass a by-law to have this Part apply to elections for the office of member of council including the head of the council of the municipality.

Council may  
by by-law  
adopt this  
Part

(2) If a by-law is passed under subsection (1), this Part applies to the election of members of council.

Application  
of Part

(3) Where the council of a regional municipality or metropolitan municipality passes a by-law under subsection (1), the clerk of the regional or metropolitan municipality shall send a copy of the by-law to the Commission and to the clerk of any

By-laws to  
be sent to  
Commission  
and clerk



area municipality who is responsible for the conduct of any election to the council of the regional or metropolitan municipality.

By-laws to  
be sent to  
Commission

(4) Where the council of a municipality, other than a regional or metropolitan municipality, passes a by-law under subsection (1), the clerk of the municipality shall send a copy of the by-law to the Commission.

School board  
may adopt  
this Part

**140.**—(1) Notwithstanding Part II, where members of a school board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the school board may pass a resolution to have this Part apply to elections of members of the board.

Application  
of Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of members of the board.

Resolution of  
school board  
to be sent to  
Commission  
and clerk

(3) Where a school board passes a resolution under subsection (1), the secretary of the board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

Local board  
may adopt  
this Part

**141.**—(1) Notwithstanding Part II, where members of a local board are to be elected at elections to be conducted by the same officers and in the same manner as elections of members of the council of a municipality, the local board may pass a resolution to have this Part apply to elections of members of the board.

Application  
of Part

(2) If a resolution is passed under subsection (1), this Part applies to elections of the board.

Resolution of  
local board  
to be sent to  
Commission  
and clerk

(3) Where a local board passes a resolution under subsection (1), the secretary of the local board shall send a copy of the resolution to the Commission and to the clerk of the municipality who is responsible for the conduct of the elections of the board.

When by-  
laws or  
resolution to  
be passed or  
repealed

**142.** A by-law under section 139 or a resolution under section 140 or 141 shall be passed prior to the 1st day of January of an election year and, once passed, shall remain in force until repealed by a by-law of the council of the municipality or by a resolution of the school board or the local board, as the case may be, but no such repealing by-law or resolution shall be passed or take effect in an election year.

## REGISTRATION

**143.**—(1) Where the council of a municipality passes a by-law under section 139 or a school board or local board passes a resolution under section 140 or 141, every person seeking election to office on the council, school board or local board, as the case may be, shall, no earlier than the 1st day of January of the election year and no later than nomination day, file with the Commission an application for registration under this Part.

Application  
for  
registration  
as candidate

(2) In the case of a new election, the application for registration referred to in subsection (1) shall be filed with the Commission no earlier than the day on which,

Application,  
new elections

- (a) an order to hold a new election is given in any judicial proceedings;
- (b) the council of the municipality passes a by-law to hold a new election;
- (c) the clerk receives from the secretary of a school board notice that a new election is required; or
- (d) an order to hold a new election is given by the Minister under the *Municipal Act*,

R.S.O. 1980,  
c. 302

and not later than nomination day.

(3) No person and no individual, corporation or trade union acting on behalf of any person shall solicit or accept contributions for the purposes of the election of that person at the next election at any time unless the person is a registered candidate.

No contri-  
butions to  
unregistered  
candidate

(4) The Commission shall maintain a register of candidates in relation to each election and shall register in it any candidate who files an application for registration with the Commission setting out,

Register

- (a) that the person,
  - (i) has been duly nominated for election to office in accordance with this Act and whose nomination is certified by the clerk, or
  - (ii) has not been so nominated but proposes to become so;

- (b) the name of the office for which the candidate has been or proposes to be nominated;
- (c) the name of the municipality in which the election is to be held or which is responsible for the conduct of the election;
- (d) the full name and address of the registered candidate;
- (e) the address of the place or places in the municipality or locality where records of the registered candidate are maintained and of the place in the municipality or locality to which communications may be addressed;
- (f) the full names and addresses of the auditor and the chief financial officer of the registered candidate;
- (g) the full name and addresses of all persons authorized by the registered candidate to accept contributions;
- (h) the name and address of every chartered bank, trust company or other financial institution in Ontario that is used by or on behalf of the registered candidate for the deposit of any contributions;
- (i) the full names and addresses of the persons responsible for making the deposits referred to in clause (h).

Effective  
date of  
registration

(5) A registered candidate who files an application under subsection (4) shall be deemed to be registered on the day of filing.

Idem

(6) An application under subsection (4) may be filed with the Commission by registered mail in which case it shall be deemed to be filed on the day it is mailed.

Where  
registered  
candidate  
withdraws,  
etc.

(7) The campaign period with respect to a registered candidate shall be deemed to expire,

- (a) where the nomination is withdrawn, on the day of the withdrawal;
- (b) where a nomination paper is not filed or the nomination is rejected by the clerk, on nomination day;

- (c) where the election is by acclamation, on the day of acclamation; and
- (d) where the registered candidate dies, on the day of death,

and the chief financial officer for that registered candidate shall file with the Commission the statement referred to in section 169 and at the same time file a copy of it with the clerk.

(8) If the information referred to in clauses (4) (d) to (i) is altered, the candidate shall immediately notify the Commission in writing of the alteration, and, upon receipt of the notice, the Commission shall vary the register accordingly.

Variation of register

**144.**—(1) After registering a candidate under subsection 143 (4), the Commission shall notify in writing the clerk of the municipality who is responsible for the conduct of the election and indicate to the clerk,

Notification by Commission to clerk

- (a) the full name and address of the registered candidate; and
- (b) the name of the office for which the registered candidate has been, or will be nominated.

(2) The clerk shall maintain a list of all registered candidates and the office for which the registered candidate has been, or will be, nominated.

Clerk to maintain list of candidates

(3) Where the full name and address of a registered candidate is varied by the Commission under subsection 143 (8), the Commission shall immediately notify the clerk in writing of the variation, and, upon receipt of the notice, the clerk shall vary the list of registered candidates accordingly.

Notification of changes

#### CHIEF FINANCIAL OFFICERS

**145.**—(1) Every person who is applying for registration under this Part, before filing an application with the Commission, shall appoint a chief financial officer.

Chief financial officer

(2) Where the chief financial officer ceases to hold office, the registered candidate shall immediately appoint another chief financial officer and shall immediately give notice in writing to the Commission of the full name and address of the new chief financial officer.

Replacement



Duties  
of chief  
financial  
officer

(3) The chief financial officer shall be responsible for ensuring that,

- (a) proper records are kept of all receipts and expenses;
- (b) contributions are placed in a depository on record with the Commission;
- (c) proper receipts are completed and dealt with in accordance with this Part;
- (d) the financial statements as required by section 169 together with the auditor's report on those statements, are filed with the Commission in accordance with this Part;
- (e) contributions consisting of goods or services are valued and recorded in accordance with this Part; and
- (f) proper direction is given to persons authorized to incur expenses.

#### CONTRIBUTIONS

Contributions

**146.**—(1) Contributions to registered candidates may be made by individuals, corporations and trade unions only during the campaign period.

How contri-  
butions of  
money to  
be made

(2) Money contributions to registered candidates in amounts in excess of \$25 shall be made only by,

- (a) a cheque having the name of the contributor legibly printed or typed on it and drawn on an account in the contributor's name;
- (b) a money order signed by the contributor; or
- (c) in the case of money contributions by an individual, the use of a credit card having the name of the individual contributor imprinted or embossed on it.

Deposit  
of funds

(3) All moneys accepted by or on behalf of a registered candidate shall be paid into an account on record with the Commission.

Refund of  
contributions

**147.**—(1) If the chief financial officer learns that any contribution received by or on behalf of the registered candidate was made or received in contravention of this Part, the chief financial officer shall, within thirty days after so learning and



upon obtaining the contributor's copy of the receipt issued under section 155 in respect of that contribution, return the contribution or an amount equal to the sum contributed.

(2) Any contributions not returned to the contributor in accordance with subsection (1) or any anonymous contribution received by a registered candidate shall not be used or spent, but shall be paid over to the Commission and become part of the general funds of the Commission to be used by the Commission in carrying out its responsibilities under this or any other Act.

Anonymous contributions

**148.**—(1) No individual, corporation or trade union shall make a contribution in money, goods and services to a registered candidate which in total exceeds \$750 in value during any campaign period.

Limitation on contributions

(2) Any moneys used for an election campaign by a registered candidate out of the candidate's own funds or those of the spouse of the registered candidate shall be considered to be a contribution for the purposes of this Part, but the limit on the total amount or value of contributions established under subsection (1) does not apply in respect of those funds.

Registered candidate's funds, spouse's funds

(3) Every registered candidate shall submit to the chief financial officer a statement in writing setting out all campaign expenses paid or to be paid out of the registered candidate's own funds or those of the spouse of the candidate, together with all receipts and claims for those expenses, within six months after polling day.

Statement to be submitted

**149.**—(1) Subject to section 159, no individual, corporation or trade union shall contribute to any registered candidate funds not actually belonging to the individual, corporation or trade union.

Contributor to contribute only funds belonging to contributors

(2) Subsection (1) does not apply to the personal representative of the estate of a person who has died leaving a will where the deceased person has directed in the will that the personal representative make a contribution to a named registered candidate out of the funds of the estate.

Exception

(3) No registered candidate and no individual, corporation or trade union on behalf of the candidate, shall solicit or accept any contribution contrary to subsection (1).

Prohibition

**150.** No registered candidate shall accept funds from,

No funds from political parties, etc. 1973-74, c. 14 (Can.)

- (a) a federal political party registered under the *Canada Elections Act* or any federal constituency association

or candidate at a federal election endorsed by such federal political party;

- (b) a provincial political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act, 1986*.

1986, c. 33

Determina-  
tion of  
value of  
goods and  
services

**151.**—(1) The value of goods and services provided as a contribution to a registered candidate is,

- (a) where the contributor is in the business of supplying these goods and services, the lowest amount charged by the contributor for an equivalent amount of similar goods and services at or about the time and in the same market area;
- (b) where the contributor is not in the business of supplying these goods or services, the lowest amount charged, at or about the time the goods or services are provided, by any other individual, corporation or trade union providing similar goods or services on a commercial retail basis in the same market area.

Where goods  
or services  
less than  
\$100

(2) Goods or services having a total value of \$100 or less may, at the option of the individual, corporation or trade union providing these goods or services, be considered not to be a contribution for the purposes of this Part.

Where goods  
or services  
provided at  
less than  
value

(3) Where goods or services are provided to a registered candidate for a price that is less than the value of the goods or services as determined under subsection (1), the amount that the price is less than that value shall, subject to subsection (2), be a contribution for the purpose of this Part.

Political  
advertisements

**152.**—(1) Where any individual, corporation or trade union with the knowledge and consent of a registered candidate promotes the election of the candidate or opposes the election of any other registered candidate by advertising on the facilities of any broadcasting undertaking, by publishing an advertisement in a newspaper, magazine or other periodical publication, by printing leaflets, pamphlets or other documents or through the use of any outdoor advertising facility and the amount of the cost of the advertisement,

- (a) in the case of any single advertisement, is more than \$100; and

- (b) in the case of any advertisements from a single service broadcast or published in any campaign period, in total exceeds \$100,

this amount shall be considered to be a contribution and, if done during the campaign period, a campaign expense of the candidate with whose knowledge and consent the political advertising was done.

(2) Notwithstanding subsection (1), where political advertising is provided on the facilities of any broadcasting undertaking without charge to registered candidates in a particular municipality or school board or local board jurisdiction in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines issued thereunder, such political broadcasts shall not be considered a contribution or a campaign expense.

Idem

R.S.C. 1970,  
c. B-11

(3) No individual, corporation or trade union shall cause any political advertisement to be broadcast on the facilities of any broadcasting undertaking or published in any newspaper, magazine or other periodical publication or through the use of any outdoor advertising facility unless the broadcaster or publisher of the political advertisement is furnished with the identification, in writing, of the individual, corporation or trade union sponsoring the political advertisement.

Identity of  
sponsor of  
advertisement  
to be known

(4) A broadcaster who broadcasts or a publisher who publishes a political advertisement shall maintain records for a period of two years after the date of the broadcast or publication setting out the advertisement, the charge for it and any material relating to identification furnished to the broadcaster or publisher in connection with the advertisement and shall permit the public to inspect these records during normal office hours.

Records to  
be  
maintained of  
political  
advertisement

(5) All political printed advertising, handbills, placards, posters and broadcast or telecast advertisements shall bear or make reference to the name of the individual, corporation or trade union sponsoring the political advertising.

Name of  
sponsor to be  
included in  
political  
advertising

(6) In this section, “political advertisement” and “political advertising” mean any matter promoting or opposing the election of any registered candidate for which a fee is paid, but does not include any news reporting done in good faith.

Definition

**153.**—(1) In this section, “fund-raising function” means events or activities held for the purpose of raising funds for the registered candidate by whom or on whose behalf the function is held.

Definition

Restriction  
on fund  
raising

(2) A fund-raising function held by or on behalf of a registered candidate shall be held only during the campaign period.

Income to be  
reported to  
Commission

(3) The gross income from any fund-raising function shall be recorded and reported to the Commission by the chief financial officer of the registered candidate who held the function or on whose behalf the function was held.

Sale of  
tickets, etc.

(4) Where a charge by the sale of tickets or otherwise is made for a fund-raising function, all or any portion of this charge, up to a maximum of \$25, may, at the option of the registered candidate by whom or on whose behalf the function was held, be considered not to be a contribution for the purposes of this Part.

Excess  
payments  
considered  
contributions

(5) Any amount paid for goods or services offered for sale at a fund-raising function in excess of the highest amount charged, at or about the time the goods or services are provided, by any other person providing similar goods on a commercial basis in the same market area shall be considered a contribution.

Collections at  
meeting

**154.**—(1) Where, at a meeting held on behalf of a registered candidate, money is given in response to a general collection of money solicited, no amount shall be given anonymously by any person in excess of \$10.

Idem,  
reporting  
of amount

(2) The amounts given under subsection (1) shall be considered not to be contributions but the gross amount collected shall be recorded and reported to the Commission by the chief financial officer.

Receipts to  
be issued for  
contributions

**155.**—(1) Every registered candidate shall issue or cause to be issued receipts in the form prescribed by the Commission for every contribution accepted.

Form of  
receipt

(2) A receipt prescribed by the Commission under subsection (1) shall provide, on its face, for the acknowledgment of the contribution accepted by or on behalf of the registered candidate and, on its back, for an application to the clerk of the municipality who was responsible for conducting the election for a tax credit that the contributor is eligible to receive under this Part on account of the contribution.

Group contri-  
butions to be  
recorded as  
to source

**156.**—(1) Any contribution to a registered candidate made through any unincorporated association, except a trade union, shall be recorded by the unincorporated association as to the individual sources and the amounts making up the contribution.



(2) The amounts making up a contribution under subsection (1) that are attributable to any individual, corporation or trade union are contributions of that individual, corporation or trade union. Idem

**157.** No registered candidate and no individual, corporation or trade union on behalf of the candidate shall solicit or accept any contributions in excess of the limits imposed by this Part. Prohibition

**158.** No registered candidate shall directly or indirectly solicit or accept contributions from, Restriction on contributions

- (a) any individual normally resident outside Ontario;
- (b) any corporation that does not carry on business in Ontario; or
- (c) a trade union other than a trade union as defined in this Part.

**159.** Contributions of not more than 15 cents per month by any member of a bargaining unit represented by a trade union through payroll deductions shall not be considered contributions from an individual for the purpose of this Part, but any amounts contributed to a registered candidate from these funds shall be considered to be a contribution from the trade union. Contributions by payroll deduction not to be considered

**160.** No contribution shall be accepted by a registered candidate except through the chief financial officer or other person on record with the Commission as authorized to accept contributions. Contributions not to be accepted by candidate directly

**161.** Every registered candidate shall keep a record of all contributions in excess of \$25, whether in the form of money, goods or services, and in the case of a single contribution in excess of \$100, or contributions from a single source that in the aggregate exceed \$100, the name and address of the contributor. Record of contributions to be kept

#### BORROWING

**162.—(1)** A registered candidate may borrow from any chartered bank or other recognized lending institution in Ontario, if the loan and its terms, including the name of any guarantor of a loan, are recorded by the candidate and reported to the Commission. Borrowing



## Limitation

(2) No registered candidate shall receive a loan from any individual, corporation, trade union or unincorporated association, other than from a chartered bank or other recognized lending institution as set out in subsection (1).

## LOAN GUARANTEE

## Guarantee of loans to registered candidates prohibited

**163.**—(1) Subject to subsection (2), no individual, corporation, trade union or unincorporated association shall sign, co-sign or provide collateral security for any loan, monetary obligation or indebtedness for or on behalf of any registered candidate.

## Exception

(2) An individual, corporation or trade union that is eligible to make a contribution under this Part may guarantee any loan referred to in subsection 162 (1).

## Guarantee as contribution

(3) A guarantee or a payment made by a guarantor in respect of a loan referred to in subsection 162 (1) is considered to be a contribution under section 148.

## CAMPAIGN ADVERTISING

## Restriction on advertising

**164.**—(1) No registered candidate and no individual, corporation or trade union acting with the candidate's knowledge and consent shall, except during the period of twenty-eight days immediately preceding the day before polling day,

- (a) advertise on the facilities of any broadcasting undertaking; or
- (b) procure for publication, cause to be published or consent to the publication of an advertisement in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities,

for the purposes of promoting or opposing the election of a registered candidate.

## Idem

(2) No individual or corporation shall, during the period prescribed in subsection (1), broadcast on the facilities of any broadcasting undertaking or publish in a newspaper, magazine or other periodical publication or through the use of outdoor advertising facilities an advertisement promoting or opposing the election of a registered candidate on behalf of any registered candidate or any individual, corporation or trade union acting with the candidate's knowledge or consent.

## Exemptions

(3) Subsections (1) and (2) do not apply to,

- (a) advertising public meetings in the municipality or the jurisdiction of the school board or local board, as the case may be;
- (b) announcing the location of the campaign headquarters of a candidate;
- (c) advertising for volunteer campaign workers;
- (d) announcing services for electors by candidates respecting the revision of the preliminary list and additions to the polling list;
- (e) announcing services for electors on polling day; or
- (f) any other matter respecting administrative functions of a candidate's campaign headquarters,

if the advertisements, announcements and other matters are done in accordance with the guidelines of the Commission.

(4) Nothing contained in subsection (1) prohibits news reporting done in good faith during the period referred to in subsection (1) or the procuring for publication or the publishing of, Idem

- (a) an advertisement referred to in subsection (1) on the day immediately preceding polling day in a newspaper which is published in the municipality or in the jurisdiction of the school board or local board, as the case may be, not more frequently than once a week if the day of regular publication falls on the day immediately preceding polling day; or
- (b) an advertisement referred to in subsection (1) on the day immediately preceding polling day and on polling day through the use of any outdoor advertising facility.

(5) Nothing in subsection (1) prohibits the broadcasting on the facilities of a broadcasting undertaking of news reporting done in good faith in accordance with the *Broadcasting Act* (Canada) and the regulations made and guidelines published thereunder during the period referred to in subsection (1). Idem,  
broadcasting  
R.S.C. 1970,  
c. B-11

(6) No individual or corporation shall,

- (a) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for broadcasting time on any broadcasting undertak-

Limitations  
on charges  
for  
broadcasting,  
publishing

ing in the period beginning on the twenty-eighth day before the day immediately before polling day at an election and ending on the second day before polling day, that exceeds the lowest rate charged by the individual or corporation for an equal amount of equivalent time on the same facilities made available to any other person in that period; or

- (b) charge a registered candidate, or any person acting with the candidate's knowledge and consent, a rate for an advertisement in a periodical publication published or distributed and made public in the period referred to in clause (a) that exceeds the lowest rate charged by the individual or corporation for an equivalent amount of advertising space in the same issue of the periodical or in any issue published or distributed and made public in that period.

#### CAMPAIGN EXPENSES

Authorized  
expenses

**165.**—(1) The campaign expenses of a registered candidate shall be incurred only under the direction of the chief financial officer of the candidate by persons authorized by the chief financial officer.

Proof of  
authority

(2) Every person authorized to incur a campaign expense by a chief financial officer under subsection (1) shall, upon request, show a certificate, in the form prescribed by the Commission, signed by the chief financial officer as proof of the authority.

Limitation on  
campaign  
expenses,  
head of  
council

**166.**—(1) The total campaign expenses incurred by a registered candidate in an election for the office of head of council of a municipality and any individual, corporation or trade union acting on behalf of that registered candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$5,500, plus \$0.50 per elector.

Idem,  
members of  
council, etc.

(2) Subject to subsection (3), the total campaign expenses incurred by a registered candidate in an election for the office of,

- (a) member of council, other than head of council, of a municipality;
- (b) member of council of a regional municipality where this office is required to be filled by the vote of the electors of an area municipality;

- (c) member of a school board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality; or
- (d) member of a local board if the members are to be elected at elections conducted by the same officers and in the same manner as elections of members of the council of a municipality,

and any individual, corporation or trade union acting on behalf of that candidate during the period commencing with the date of registration and ending on polling day shall not exceed \$3,500, plus \$0.50 per elector.

(3) Where the municipality, school board or local board jurisdiction is divided into wards and the election is for an office to represent the electors of one or more of those wards, the number of electors to be used in the calculation of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office shall be the total number of electors in the ward or wards, as the case may be.

Campaign  
expenses,  
ward system

(4) For the purposes of this section, the number of electors in a municipality or a school board or local board jurisdiction or a ward of the municipality or the school board or local board jurisdiction shall be determined by the clerk on the basis of information obtained from the polling list.

Determi-  
nation of  
number  
of electors

(5) After determining the number of electors under subsection (4), the clerk shall calculate, for each office, the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for an office under subsection (1) or (2), and certify this amount in the prescribed form and, no later than ten days after nomination day, deliver or cause to be delivered personally or send or cause to be sent by registered mail a copy of the certificate to each registered candidate for the office and to the Commission.

Duties  
of clerk

(6) Certification of the maximum amount of total campaign expenses that may be incurred by or on behalf of a registered candidate for the office by the clerk under subsection (5) is conclusive evidence of the fact.

Clerk's  
certificate  
conclusive

**167.**—(1) Every individual who or corporation or trade union which has any claim for payment in relation to a campaign expense shall submit the claim to the chief financial officer of the registered candidate who incurred the expense,

Submission  
of payment  
claims



(a) in the case of a regular election, no later than the 31st day of March in the year following the election year; or

(b) in the case of a new election, no later than 135 days after polling day.

Payment  
of claims

(2) Every payment of a campaign expense shall be made by the chief financial officer of the registered candidate who incurred the campaign expense and, except where the campaign expense is less than \$25, the chief financial officer shall set out the particulars of payment.

Disputed  
claims

(3) Where the chief financial officer of a registered candidate disputes or refuses to pay any claim for payment in relation to a campaign expense, that claim shall be considered to be a disputed claim.

#### AUDITORS

Appointment  
of auditor

R.S.O. 1980,  
c. 405

**168.**—(1) Every candidate, at the time of appointing a chief financial officer, shall appoint an auditor licensed under the *Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor.

Change of  
auditors

R.S.O. 1980,  
c. 405

(2) If an auditor appointed under subsection (1) ceases to hold office, ceases to be qualified under subsection (1) or becomes ineligible under subsection (3), the candidate shall immediately appoint another auditor licensed under the *Public Accountancy Act* and shall immediately notify the Commission of the full name and address of the auditor.

Persons not  
eligible to be  
auditors

(3) No election official and no registered candidate or chief financial officer of a registered candidate shall act as the auditor for the candidate, but nothing in this subsection makes ineligible the partners with whom or the firm with which this person is associated from acting as an auditor for the registered candidate.

Report of  
auditor

(4) The auditor shall make a report to the chief financial officer of the registered candidate who appointed the auditor in respect of the financial statements, as required by section 169, and shall make such examination of the financial statements and supporting documentation as is necessary to enable the auditor to report on them in accordance with generally accepted auditing standards.

Idem

(5) If,



- (a) the auditor has not received from the chief financial officer all the information and explanation that is required; or
- (b) proper accounting records have not been kept by the chief financial officer so far as appears from the auditor's examination,

the auditor shall make a statement to that effect in the report made under subsection (4).

(6) An auditor shall have access at all reasonable times to the records, documents, books, accounts and vouchers of the registered candidate. Right of access

(7) The chief financial officer of the candidate shall provide such information and explanation as is necessary to enable the auditor to make the report under subsection (4). Co-operation required

#### FINANCIAL STATEMENTS

**169.**—(1) The chief financial officer of every registered candidate shall file with the Commission, Filing of financial statements with Commission

- (a) a financial statement setting out,
  - (i) all income received and expenses incurred in the campaign period,
  - (ii) all campaign expenses, paid and outstanding, incurred in a campaign period and a statement of all disputed claims, and
  - (iii) all information required to be recorded under section 161 that relates to the campaign period; and
- (b) the auditor's report on the financial statement.

(2) The financial statement and auditor's report under subsection (1) shall be filed, Idem

- (a) in the case of a regular election, no later than the 30th day of June in the year following the election year; or
- (b) in the case of a new election, no later than 225 days after polling day.

Filing of  
financial  
statements  
with clerk of  
municipality

(3) The chief financial officer shall, at the time of filing with the Commission, file a copy of the financial statement and the auditor's report referred to under subsection (1) with the clerk of the municipality who was responsible for the conduct of the election for which the registered candidate was registered.

Commission  
to prepare  
statement

(4) After the time for the filing of a financial statement and auditor's report has expired, the Commission shall immediately prepare a statement disclosing,

- (a) the information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a statement or report under this section,

and submit the statement to the council of the municipality, school board or local board, as the case may be.

Demand to  
candidate to  
file

(5) After the time for the filing of the financial statement and auditor's report has expired, the Commission shall immediately send by registered mail or deliver to a registered candidate who has failed to file a statement and report, a notice in the form prescribed by the Commission demanding that the registered candidate file a financial statement and auditor's report within thirty days from the date of the notice.

Contents of  
demand  
notice

(6) The notice under subsection (5) shall state that the registered candidate, if elected, shall forfeit the office and that the registered candidate, whether elected or not, is ineligible to hold any office up to and including the next regular election if the registered candidate fails to file the financial statement and auditor's report within thirty days of the date of the notice.

Publication  
of notice

(7) The Commission shall publish the notice under subsection (5) in a newspaper having general circulation in the municipality.

Commission  
to prepare  
supple-  
mentary  
statement

(8) After the thirty day period for the filing of a statement and report has expired, the Commission shall immediately prepare a supplementary statement disclosing,

- (a) any additional information received under this section; and
- (b) the name of the registered candidate, if any, who failed to file a financial statement and auditor's

report within the thirty day period allowed under subsection (5),

and submit the statement to the council of the municipality, school board or local board, as the case may be.

#### SURPLUS

**170.**—(1) Where the financial statement of a registered candidate filed under section 169 shows a surplus, the surplus shall be immediately paid over to the clerk who was responsible for the conduct of the election who shall hold it in trust for the registered candidate for use in whole or in part by the registered candidate in the next regular election. Surplus funds

(2) The clerk shall not release the surplus held in trust for a candidate under subsection (1) to the candidate for use in whole or in part in the next regular election until the clerk has been notified by the Commission under section 143 that the candidate has become registered under this Part for that election. Release of funds, regular elections

(3) Where the candidate for whose benefit the surplus is held in trust under subsection (1) becomes registered under this Part for a new election that precedes the next regular election, the clerk, upon being so notified by the Commission, shall release the surplus to the candidate for use in whole or in part in that new election. Idem, new elections

(4) No surplus shall be released under subsection (2) or (3) to the registered candidate for whose benefit it is held in trust under subsection (1) where the office for which the candidate has been, or will be, nominated in the election is not on the same council, school board or local board, as the case may be, as the office in respect of which the surplus was produced. Restriction

(5) Where the candidate for whose benefit the surplus is held in trust under subsection (1), Disposal of surplus

- (a) notifies the clerk in writing that the candidate does not intend to seek nomination;
- (b) fails to be nominated;
- (c) is ineligible to be nominated; or
- (d) fails to become registered,

in the next regular election, the surplus shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Idem

(6) Upon the repeal of any by-law passed under section 139 or any resolution passed under section 140 or 141, any surplus held by the clerk under this section shall be paid into the general funds of the municipality, school board or local board, as the case may be.

Ineligibility  
respecting  
future  
elections

**171.—(1)** If a registered candidate,

- (a) fails to file a financial statement and auditor's report within thirty days of the date of the notice sent under subsection 169 (5);
- (b) files a financial statement and auditor's report that is either incorrect or does not comply with section 169 and fails to file a correction statement and report within thirty days from the date that the Commission files the statement under subsection 169 (5); or
- (c) incurs campaign expenses in excess of the amount permitted under section 166,

the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.

Forfeiture  
of office

(2) If a registered candidate who is declared elected, fails to file the documents referred to in clause (1) (a) or (b) or has exceeded the amount referred to in clause (1) (c), the Commission shall within five days of the default notify in writing the registered candidate and the council, school board or local board, as the case may be, to which the registered candidate was elected and the office to which the registered candidate was elected shall be deemed vacant and the registered candidate shall forfeit the office.

Ineligibility  
respecting  
future  
elections

(3) If the office to which a registered candidate was elected subsequently becomes vacant and the registered candidate has forfeited the office under subsection (2), the registered candidate, in addition to any other penalty, is ineligible to be elected a member of the council, school board or local board or to hold office as a member thereof or to hold any other office in the municipality up to and including the next regular election.



**172.**—(1) Where the financial statement of a registered candidate who is not declared elected shows a surplus and the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170, the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless before that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility  
where surplus  
not paid to  
clerk

(2) Where,

Office  
declared  
vacant

- (a) a registered candidate is declared elected;
- (b) the financial statement of the candidate shows a surplus; and
- (c) the chief financial officer of the candidate fails to pay over the surplus to the clerk as required by section 170,

the Commission shall notify in writing the candidate and the council, school board or local board, as the case may be, to which the candidate was elected and the office to which the candidate was elected shall be immediately declared vacant and, in addition, the candidate is liable to any other penalty that may be imposed under this Act.

(3) Where the office to which a registered candidate was declared elected is subsequently declared vacant under subsection (2), the candidate, in addition to any other penalty, is ineligible to be nominated as a candidate in any subsequent election relating to any office for a period up to and including the next regular election, unless prior to that subsequent election the candidate or the chief financial officer has paid over the surplus to the clerk.

Ineligibility  
respecting  
future  
elections

#### TAX CREDIT

**173.**—(1) Every individual who and every corporation or trade union which made a contribution to a candidate registered under this Part during the campaign period of an election may within one year of polling day apply, in the form prescribed by the Commission, to the clerk of the municipality who was responsible for conducting the election to receive a tax credit.

Tax credit

(2) The tax credit which a contributor is eligible to receive under subsection (1) is an amount equal to,

Amount of  
tax credit



- (a) 75 per cent of the total amount contributed by the contributor to all candidates if the amount contributed does not exceed \$100;
- (b) \$75 plus 50 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$100 and does not exceed \$400; or
- (c) the lesser of,
  - (i) \$225 plus 33 1/3 per cent of the amount by which the total amount contributed by the contributor to all candidates exceeds \$400 if the total amount contributed exceeds \$400, and
  - (ii) \$350,

if payment of each amount that is included in the total amount contributed by the contributor to all registered candidates is proven by receipts in the form prescribed by the Commission that are signed by a recorded agent of the candidate.

Reduction of  
tax credits

(3) A tax credit under subsection (2),

- (a) shall first be applied by the clerk to reduce any arrears in taxes or other debts then owing to the municipality by the contributor; and
- (b) may be applied to offset current taxes, at the request of the contributor.

Payment of  
rebates

(4) Where the contributor does not owe any taxes or other debts to the municipality or does not make the request under clause (3) (b), the clerk shall pay to the contributor an amount equal to the amount of the tax credit which the contributor is eligible to receive under subsection (2).

Recovery of  
tax credit

(5) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in an election for the office of chairman or member of the council of a regional or metropolitan municipality, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the regional or metropolitan municipality by billing the regional or metropolitan municipality for that amount.

Recovery of  
tax credit  
from school  
board

(6) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a reg-

istered candidate in a school board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the school board by billing the school board for that amount.

(7) Where the contribution upon which the application for a tax credit under subsection (1) is based was made to a registered candidate in a local board election, the clerk shall recover the amount of the tax credit provided to any contributor under subsection (3) or (4) from the local board by billing the local board for that amount.

Recovery of  
tax credit  
from local  
board

(8) No tax credit shall be provided to a contributor under subsection (3) or (4) until the Commission has notified the clerk in writing that all of the financial statements and auditor's reports filed with it by the chief financial officers of the registered candidates in the election as required by section 169 have been examined.

Condition for  
giving tax  
credits

(9) Tax credits shall be issued to contributors only during the one-year period following receipt of the notice given by the Commission under subsection (8).

Time  
restriction

(10) No tax credit shall be provided to a contributor under subsection (3) or (4) for a contribution to a registered candidate where the chief financial officer of the candidate has failed to file the financial statement and auditor's report required by section 169 or where the financial statement and auditor's report of the candidate have been found by the Commission to be unsatisfactory.

Refusal of  
tax credit

(11) In this section, "tax credit" includes a rebate of contributions.

Interpretation

#### ACCESS TO DOCUMENTS

**174.**—(1) Documents filed with the Commission or the clerk of a municipality under this Part are public records and may be inspected by any person upon request at the office of the Commission or of the clerk during normal office hours.

Inspection of  
documents

(2) Any person may make extracts from the documents referred to in subsection (1) and is entitled to copies of the documents upon payment for the preparation of the copies at such rate as the Commission may determine or at such rate as the clerk charges for the preparation of copies of other documents.

Extracts and  
copies

(3) No individual, corporation or trade union shall use any of the information contained in any document filed with the

Not to be  
used for  
commercial  
solicitation

Commission or the clerk under this Part for the purpose of commercial solicitation.

#### FORMS

Form

**175.** All applications, returns, statements and other documents to be filed with the Commission shall be filed in the form prescribed by the Commission.

#### POWERS AND DUTIES OF COMMISSION

Powers and  
duties of  
Commission  
1986, c. 33

**176.** Except as otherwise provided in this Part, the provisions of the *Election Finances Act, 1986* relating to the powers and duties of the Commission apply with necessary modifications to the Commission in the administration of this Part.

#### OFFENCES

Offence,  
chief  
financial  
officer

**177.—(1)** The chief financial officer of a registered candidate who contravenes section 169 is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Idem,  
candidate

**(2)** Where any contravention of this Part that is an offence by virtue of subsection (1) is committed by a chief financial officer of a registered candidate, the candidate for which the chief financial officer acts is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
candidate

**178.** Where the total campaign expenses incurred by a registered candidate and any individual, corporation or trade union acting on behalf of the candidate during the campaign period exceeds the amount determined under section 166 for the office subject to election, the registered candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount by which the total campaign expenses of the candidate exceeded the amount determined under section 166.

Offence,  
candidate

**179.** Where the financial statement of a registered candidate shows a surplus and the surplus is not paid over to the clerk as required by section 170, the candidate is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 plus the amount of the surplus.

Offence,  
corporations,  
trade union

**180.** Every corporation or trade union that contravenes any of sections 143 to 174 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

**181.** Every individual who contravenes any of sections 143 to 174, except subsection 148 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence,  
individuals

**182.** No person shall obstruct a person making an investigation or examination under this Part or withhold, conceal or destroy or alter any books, papers, documents or things relevant to the subject-matter of the investigation or examination.

Obstruction  
prohibited

**183.** No person shall knowingly make a false statement in any application, return, financial statement or other document filed with the Commission under this Part.

Prohibition,  
false  
statements

**184.** No person shall knowingly give false information to a chief financial officer or other person authorized to accept contributions.

Prohibition,  
false  
information

**185.—(1)** A prosecution for an offence under this Part may be instituted against a trade union in the name of the trade union and, for the purposes of any prosecution, the trade union shall be deemed to be a person.

Prosecution  
of trade  
unions

(2) Any act or thing done or omitted by an officer or agent of a trade union within the scope of the officer's or agent's authority on behalf of the trade union shall be deemed to be an act or thing done or omitted by the trade union.

Trade union  
liable for acts  
of agents

**186.** No prosecution shall be instituted under this Part without the consent of the Commission and no prosecution shall be instituted more than one year after the facts upon which the prosecution is based first came to the knowledge of the Commission.

Consent of  
Commission

**13.** Section 37 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by inserting after "qualified" in the first line "to be elected or".

**14.** Section 38 of the said Act is amended by adding thereto the following subsection:

(1a) A member of council who ceases to hold the qualifications required under clause 37 (a) is disqualified from holding the office of member of council.

Member to  
maintain  
eligibility

**15.—(1)** For the purpose of the 1988 regular elections, the campaign period commences on the day this Act comes into force.

Transition

(2) For the purpose of the 1988 regular elections, a municipality, school board or local board may pass a by-law or reso-

Idem



lution to have Part III apply to the election if the by-law or resolution is passed within sixty days after the coming into force of this Act.

Commence-  
ment

**16.—(1)** This Act, except section 3, comes into force on the day it receives Royal Assent.

Idem

**(2)** Section 3 comes into force on the 1st day of January, 1991.

Short title

**17.** The short title of this Act is the *Municipal Elections Statute Law Amendment Act, 1988*.







# Bill 107

## An Act to amend the Child and Family Services Act, 1984

The Hon. J. Sweeney

*Minister of Community and Social Services*

*1st Reading*      April 7th, 1988

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTES

**SECTIONS 1 and 2.** The new subsection 40 (2a) provides that justices of the peace should not refuse to issue a warrant to apprehend a child simply because the Act provides for apprehension without a warrant.

It is provided that warrants for apprehending children need not specify the premises where the child is located.

The provisions concerning apprehension of children who are runaway wards of a society are removed from section 40 and incorporated into the new section 40a. The purpose of the removal is to provide that on apprehension of runaway wards there does not have to be a new hearing to find them in need of protection. The present subsection 40 (10), dealing with apprehension of children under twelve who have committed an offence, becomes the new section 40b.

The new section 40c deals with runaway children. It authorizes a justice of the peace to issue a warrant for the apprehension of a child on the basis of the sworn information of the child's parent (a defined term) that the child has withdrawn from the parent's care and control without consent and that the parent believes that the child's health or safety may be at risk if the child is not apprehended. A child apprehended under this section would be returned to the parent unless the parent is not available or the child appears to be in need of protection.

Sections 40d and 40e extend the application of provisions now in section 40 concerning right of entry and protection from personal liability to sections 40a and 40c.

**SECTION 3.** Subsection 42 (2) is amended as a result of amendments in sections 1 and 2.

**SECTIONS 4 and 5.** Housekeeping.

**SECTION 6.** Subsection 75 (5) prohibits a person having charge of a child from allowing the child to loiter in a public place or be unaccompanied in a place of public entertainment between midnight and 6 a.m. Subsection 75 (6) authorizes the apprehension of a child who is doing one of these things. The subsections are amended to put the prohibition on the parent rather than on the person in charge of the child and to require that any child out at that time of night is with the parent or an adult specifically authorized by the parent.

**SECTION 7.** The offence provision is amended as a result of the amendments in sections 1 and 2 of the Bill.

**SECTION 8.** Subsection 89 (2) sets out the circumstances under which the Provincial Director may detain a young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety. It is expanded to allow the Provincial Director to so detain a young person who leaves or attempts to leave a place of temporary detention without consent or who is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code*.

**SECTION 9.** This section authorizes the apprehension of young persons who are absent from custody without permission. It is amended to correspond to the amendments in section 6 of the Bill, above, and to give greater flexibility in deciding where to take such a young person, once apprehended.

The power to enter premises by force if necessary to search for and remove a young person who is absent from custody under section 94 is extended to apply to entry without a warrant.

**SECTIONS 10 to 17.** The provisions dealing with orders for commitment to a secure treatment program (sections 110-117) are amended,

- (a) to permit orders to be made for any period up to 180 days (the Act now provides for orders for the full 180 days);
- (b) to permit one extension of an order after a child's eighteenth birthday;
- (c) to permit a parent, society or child twelve years of age or older to apply for review of commitment to a secure treatment program;
- (d) to permit a society that has custody of a child to receive a copy of an assessment report done in respect of an application for commitment.

The provision dealing with emergency commitment to a secure treatment program (section 118) is amended,

- (a) to allow the administrator to admit a child for a period of up to thirty days without court authorization;
- (b) to modify the criteria for emergency commitment;
- (c) to require the administrator within twenty-four hours of the child's admission to notify a child who is admitted of his or her right to a review and to notify the Office of Child and Family Service Advocacy and the Official Guardian of the child's admission;
- (d) to require the Office of Child and Family Service Advocacy to ensure that the child receives an explanation of his or her rights forthwith and to require the Official Guardian to ensure that the child is represented as early as possible;
- (e) to require that the Child and Family Services Review Board hear any requests for review within five days of an application.

Section 119 is amended to authorize peace officers to apprehend a child who has run away from a secure treatment program. The period of commitment is stayed while the child is absent from the secure treatment program.

**SECTION 18.** Subsection 125 (2) of the Act is amended to permit restraint during transportation of a child who has been admitted to a secure treatment program under Part VI of the Act.

**SECTION 19.** Clause 126 (2) (c) provides that a consent to the administration of a psychotropic drug shall identify the drug clearly and specify any risks and possible side effects associated with the drug and how they vary with different dosages. The amendment changes "any risks" to "the risks".

**SECTION 20.** Section 29 of the *Mental Health Act* sets out rules with regard to disclosure under a subpoena or other process of clinical records in a psychiatric facility. The new section 166a set out in this section adopts those rules for any record of a mental disorder in the possession of a service provider.

**SECTIONS 21 to 23.** These provisions amend the regulation making authority under the Act in light of the amendments already discussed. The provision that allows the regulations to prescribe drugs or combinations of drugs as psychotropic drugs is amended by subsection 18 (2) to allow classes of drugs to be so prescribed.





Bill 107

1988

**An Act to amend the  
Child and Family Services Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Subsection 40 (2) of the *Child and Family Services Act, 1984*, being chapter 55, is repealed and the following substituted therefor:**

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

Warrant to  
apprehend  
child

(a) the child is in need of protection; and

(b) a less restrictive course of action is not available or will not protect the child adequately.

(2a) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (6). Idem

**(2) Subsection 40 (4) of the said Act is amended by adding at the end thereof “or to specify the premises where the child is located”.**

**(3) Subsection 40 (5) of the said Act is amended by striking out “the” in the third line and inserting in lieu thereof “any”.**

**(4) Clause 40 (6) (a) of the said Act is repealed and the following substituted therefor:**

(a) a child is in need of protection; and

. . . . .

**(5) Subsections 40 (10) to (17) of the said Act are repealed and the following substituted therefor:**

Right of entry, etc.

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (6) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations re power of entry

(11) A child protection worker authorized to enter premises under subsection (5) or (10) shall exercise the power of entry in accordance with the regulations.

Peace officer has powers of child protection worker

(12) Subsections (2), (5), (6), (9), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

Protection from personal liability

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

**2. The said Act is amended by adding thereto the following sections:**

**SPECIAL CASES OF APPREHENSION OF CHILDREN**

Warrant to apprehend child in care

**40a.**—(1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a peace officer's or child protection worker's sworn information that,

- (a) the child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

Idem

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

No need to specify premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

(4) A peace officer or child protection worker who believes on reasonable and probable grounds that,

Apprehension of child in care without warrant

- (a) a child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1),

may without a warrant bring the child to a place of safety.

(5) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant.

(6) A person who apprehends a child under subsection (5) shall,

Idem

- (a) take the child to a place of safety to be detained until the child can be returned to the place of safety the child left; or
- (b) return the child or arrange for the child to be returned to the place of safety the child left.

**40b.**—(1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,

Apprehension of child under twelve

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or

- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to  
parent, etc.

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child  
not returned  
to parent,  
etc., within  
twelve hours

(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (6) and not apprehended under subsection (1).

Definition

**40c.**—(1) In this section, “parent” includes,

- (a) a person, other than an individual, that has custody of the child;
- (b) a person who has care and control of the child.

Warrant to  
apprehend  
runaway  
child

(2) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a parent of the child that,

- (a) the child is under the age of sixteen years;
- (b) the child has withdrawn from the parent's care and control without the parent's consent; and
- (c) the parent believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.

Idem

(3) A person who apprehends a child under subsection (2) shall return the child to the child's parent as soon as practicable and where it is not possible to return the child to the parent within a reasonable time, take the child to a place of safety.

Notice to  
parent, etc.

(4) The person in charge of a place of safety to which a child is taken under subsection (3) shall make reasonable efforts to notify the child's parent that the child is in the place of safety so that the child may be returned to the parent.



(5) Where a child taken to a place of safety under subsection (3) cannot be returned to the child's parent within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (2) and not apprehended under subsection (2).

Where child not returned to parent within twelve hours

(6) A justice of the peace shall not issue a warrant under subsection (2) where a child has withdrawn from the care and control of one parent with the consent of another parent under circumstances where a proceeding under section 37 of the *Children's Law Reform Act* would be more appropriate.

Where custody enforcement proceedings more appropriate  
R.S.O. 1980, c. 68

(7) It is not necessary in a warrant under subsection (2) to specify the premises where the child is located.

No need to specify premises

(8) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the parent,

Child protection proceedings

(a) the peace officer or child protection worker may take the child to a place of safety under subsection 40 (6); or

(b) where the child has been taken to a place of safety under subsection (5), the child shall be dealt with as if the child had been taken there under subsection 40 (6).

#### POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION

**40d.**—(1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 40a (1) or 40c (2) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child.

Authority to enter, etc.

(2) A person authorized under subsection 40a (4) or (5) or 40b (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

Police  
assistance

(4) A child protection worker acting under section 40a or 40c may call for the assistance of a peace officer.

Consent to  
examine child

(5) A child protection worker who deals with a child under subsection 40b (3) or 40c (5) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(6) Where a person who brings a child to a place of safety under section 40a or 40b believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Protection  
from  
personal  
liability

(7) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 40a, 40b or 40c or for an alleged neglect or default in the execution in good faith of that duty.

**3. Subsection 42 (2) of the said Act is amended by striking out "under subsection 43 (1) (child protection hearing)" in the fourth and fifth lines.**

**4. Subsection 43 (1) of the said Act is amended by inserting after "40 (1)" in the second line "or a matter is brought before the court".**

**5. Section 48 of the said Act is amended by inserting after "40 (1)" in the first line "or a matter is brought before the court".**

**6. Subsections 75 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Allowing  
child to  
loiter, etc.

(5) No parent of a child less than sixteen years of age shall permit the child to,

- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
- (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual eighteen years of age or older to accompany the child.

Police may  
take child  
home or to  
place of  
safety

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access

between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40b (1).

**7. Clause 80 (b) of the said Act is repealed and the following substituted therefor:**

- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 40, 40a, 40b, 40c or 40d.

**8. Subsection 89 (2) of the said Act is repealed and the following substituted therefor:**

(2) A provincial director may detain a young person in a place of secure temporary detention if the circumstances described in paragraph 1 or 2 apply to the young person and if the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety:

Where secure  
detention  
available

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).

R.S.C. 1970,  
c. J-3

R.S.C. 1970,  
c. C-34

**9.—(1) Subsections 94 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:**

Apprehension of young person absent from place of temporary detention  
R.S.O. 1980, c. 400

(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

Idem: place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

Young person to be returned within forty-eight hours

(3) A young person who is apprehended under this section shall be returned to the place from which he or she is absent within forty-eight hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 89 (2).

**(2) Subsections 94 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Authority to enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

Regulations re exercise of power of entry

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.



**10.—(1) Paragraph 2 of subsection 110 (1) of the said Act is amended by striking out “or” at the end of subparagraph ii and by adding thereto the following subparagraph:**

- iiia. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application,  
or

**(2) Subsections 110 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) Where an application is made under subsection (1), the court shall deal with the matter within ten days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for  
hearing

**(3) Section 110 of the said Act is amended by adding thereto the following subsections:**

(4a) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 113 (1) (a) to (f) and, where the child is less than twelve years old, the Minister consents to the child's admission.

Interim order

(4b) For the purpose of subsection (4a), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Evidence on  
adjournments

**11. Subsection 111 (3) of the said Act is amended by striking out “a single 180 day” in the second line and inserting in lieu thereof “the”.**

**12. Subsection 112 (4) of the said Act is amended by adding thereto the following clause:**

- (da) a society that has custody of the child under an order made under Part III (Child Protection).

**13. Subsections 114 (1) and (2) of the said Act are repealed and the following substituted therefor:**

(1) The court shall specify in an order under subsection 113 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Period of  
commitment



Where  
society is  
applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than sixty days, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

**14.—(1) Section 116 of the said Act is amended by adding thereto the following subsection:**

Idem

(1a) Where a person is kept in the secure treatment program under subsection 114 (4) after attaining the age of eighteen years,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

**(2) Subsection 116 (2) of the said Act is amended by inserting after "(1)" in the first line "or (1a)".**

**(3) Subsection 116 (3) of the said Act is amended by adding at the end thereof "or (1a)".**

**(4) Subsection 116 (5) of the said Act is repealed and the following substituted therefor:**

(5) The court shall specify in an order under subsection 116 (4) the period not exceeding 180 days for which the child shall be committed to the secure treatment program. Period of extension

**15. The said Act is further amended by adding thereto the following sections:**

#### REVIEW OF COMMITMENT

**117a.**—(1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 113 (1) (commitment) or 116 (4) (extension): Review of commitment

1. The child, where the child is twelve years of age or more.
2. The child's parent.
3. The society having care, custody or supervision of the child.

(2) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1). ss. 110 (4-8), 111, 112 apply

(3) The court shall make an order terminating a child's commitment unless the court is satisfied that, Termination of order

- (a) the child has a mental disorder;
- (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
- (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 113 (1) or 116 (4), or other appropriate treatment.

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program. Idem

**117b.** Subsections 116 (2), (3), (4) and (5) and sections 117 and 117a apply with necessary modifications to a person ss. 116 (2-5), 117, 117a apply

who is eighteen years of age or older and committed to a secure treatment program as if the person were a child.

**16.—(1) Paragraph 2 of subsection 118 (1) of the said Act is amended by striking out “or” at the end of subparagraph ii and by adding thereto the following subparagraph:**

- ii. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or

**(2) Subsection 118 (2) of the said Act is amended by inserting after “subsection (1)” in the second line “for a period not to exceed thirty days”.**

**(3) Clause 118 (2) (b) of the said Act is repealed and the following substituted therefor:**

- (b) the child has, as a result of the mental disorder, caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person.

**(4) Subsection 118 (6) of the said Act is repealed and the following substituted therefor:**

Notices  
required

(6) The administrator shall ensure that within twenty-four hours after a child is admitted to a secure treatment program under subsection (2),

- (a) the child is given written notice of his or her right to a review under subsection (9); and
- (b) the Office of Child and Family Service Advocacy and the Official Guardian are given notice of the child's admission.

Mandatory  
advice

(7) The Office of Child and Family Service Advocacy shall ensure that forthwith after the notice is received a person who is not employed by the secure treatment facility explains to the child his or her right to a review in language suitable for the child's level of understanding.

Official  
Guardian to  
ensure child  
represented

(8) The Official Guardian shall represent the child at the earliest possible opportunity and in any event within five days after receiving a notice under subsection (6) unless the Official

Guardian is satisfied that another person will provide legal representation for the child within that time.

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

Application  
for review

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

Child may be  
kept in  
program  
while  
application  
pending

(11) Subsections 110 (6), (7) and (8) (hearing) and section 111 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

Procedure

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

Time for  
review

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses 118 (2) (a) to (e).

Order

**17. Section 119 of the said Act is amended by adding thereto the following subsections:**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Apprehen-  
sion of child  
who leaves

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

Period of  
commitment

**18. Subsection 125 (2) of the said Act is amended by inserting after "child" in the third line "who has been admitted to a secure treatment program under this Part".**

**19. Clause 126 (2) (c) of the said Act is amended by striking out "any" in the first line and inserting in lieu thereof "the".**

**20. The said Act is further amended by adding thereto the following section:**



## Definition

**166a.**—(1) In this section, “record of a mental disorder” means a record or a part of a record made about a person concerning a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person’s capacity to make reasoned judgments.

## Disclosure pursuant to subpoena

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act unless a physician states in writing that he or she believes that to do so,

(a) is likely to result in harm to the treatment or recovery of the person to whom the record relates; or

(b) is likely to result in,

(i) injury to the mental condition of another person, or

(ii) bodily harm to another person.

## Hearing to be held

(3) The court before which a matter described in subsection (2) is in issue on motion or, where a disclosure, transmittal or examination is not required by a court, the Divisional Court on motion shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

## Idem

(4) A motion under subsection (3) shall be on notice to the physician and shall be held in the absence of the public.

## Consideration of court

(5) In a motion under subsection (3), the court shall consider whether or not the disclosure, transmittal or examination of the record referred to in the physician’s statement is likely to have a result described in clause (2) (a) or (b) and for the purpose the court may examine the record.

## Order of court

(6) The court shall not order that the record referred to in the physician’s statement be disclosed, transmitted or examined if the court is satisfied that a result described in clause (2) (a) or (b) is likely unless satisfied that to do so is essential in the interests of justice.

## Return of record to service provider

(7) Where a record of a mental disorder is required under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted shall return the record to the service pro-



vider forthwith after the determination of the matter in issue in respect of which the record was required.

**21.** Clause 199 (a) of the said Act is amended by striking out “(14)” in the second line and inserting in lieu thereof “(10) and section 40d”.

**22.** Clause 200 (1) (m) of the said Act is amended by striking out “by a warrant issued under subsection 94 (4)” in the second line and inserting in lieu thereof “under subsection 94 (5)”.

**23.—(1)** Clause 202 (a) of the said Act is amended by striking out “children” in the first line and inserting in lieu thereof “persons”.

**(2)** Clause 202 (i) of the said Act is amended by striking out “or combinations of drugs” in the first line and inserting in lieu thereof “combinations of drugs or classes of drugs”.

**24.** A child who is a patient in a psychiatric facility under a certificate of involuntary admission under the *Mental Health Act* on the day this section comes into force and who is in premises where a secure treatment program has been established or approved shall be deemed to have been committed to the secure treatment program under section 113 for a period that ends when the certificate expires.

Transition  
R.S.O. 1980,  
c. 262

**25.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**26.** The short title of this Act is the *Child and Family Services Amendment Act, 1988*.

Short title



---

1ST SESSION, 34TH LEGISLATURE, ONTARIO37 ELIZABETH II, 1988

---

# Bill 107

## An Act to amend the Child and Family Services Act, 1984

The Hon. J. Sweeney  
*Minister of Community and Social Services*

---

<i>1st Reading</i>	April 7th, 1988
<i>2nd Reading</i>	May 24th, 1988
<i>3rd Reading</i>	
<i>Royal Assent</i>	

*(Reprinted as amended by the Social Development Committee)*

---

## EXPLANATORY NOTES

**SECTIONS 1 and 2.** The new subsection 40 (2a) provides that justices of the peace should not refuse to issue a warrant to apprehend a child simply because the Act provides for apprehension without a warrant.

It is provided that warrants for apprehending children need not specify the premises where the child is located.

The provisions concerning apprehension of children who are runaway wards of a society are removed from section 40 and incorporated into the new section 40a. The purpose of the removal is to provide that on apprehension of runaway wards there does not have to be a new hearing to find them in need of protection. The present subsection 40 (10), dealing with apprehension of children under twelve who have committed an offence, becomes the new section 40b.

The new section 40c deals with runaway children. It authorizes a justice of the peace to issue a warrant for the apprehension of a child on the basis of the sworn information of the child's parent (a defined term) that the child has withdrawn from the parent's care and control without consent and that the parent believes that the child's health or safety may be at risk if the child is not apprehended. A child apprehended under this section would be returned to the parent unless the parent is not available or the child appears to be in need of protection.

Sections 40d and 40e extend the application of provisions now in section 40 concerning right of entry and protection from personal liability to sections 40a and 40c.

**SECTION 3.** Subsection 42 (2) is amended as a result of amendments in sections 1 and 2.

**SECTIONS 4, 5 and 6.** Housekeeping.

**SECTION 7.** Subsection 75 (5) prohibits a person having charge of a child from allowing the child to loiter in a public place or be unaccompanied in a place of public entertainment between midnight and 6 a.m. Subsection 75 (6) authorizes the apprehension of a child who is doing one of these things. The subsections are amended to put the prohibition on the parent rather than on the person in charge of the child and to require that any child out at that time of night is with the parent or an adult specifically authorized by the parent.

**SECTION 8.** The offence provision is amended as a result of the amendments in sections 1 and 2 of the Bill.

**SECTION 9.** Subsection 89 (2) sets out the circumstances under which the Provincial Director may detain a young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety. It is expanded to allow the Provincial Director to so detain a young person who leaves or attempts to leave a place of temporary detention without consent or who is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code*.

**SECTION 10.** This section authorizes the apprehension of young persons who are absent from custody without permission. It is amended to correspond to the amendments in section 7 of the Bill, above, and to give greater flexibility in deciding where to take such a young person, once apprehended.

The power to enter premises by force if necessary to search for and remove a young person who is absent from custody under section 94 is extended to apply to entry without a warrant.

**SECTIONS 11 to 18.** The provisions dealing with orders for commitment to a secure treatment program (sections 110-117) are amended,

- (a) to permit orders to be made for any period up to 180 days (the Act now provides for orders for the full 180 days);
- (b) to permit one extension of an order after a child's eighteenth birthday;
- (c) to permit a parent, society or child twelve years of age or older to apply for review of commitment to a secure treatment program;
- (d) to permit a society that has custody of a child to receive a copy of an assessment report done in respect of an application for commitment.

The provision dealing with emergency commitment to a secure treatment program (section 118) is amended,

- (a) to allow the administrator to admit a child for a period of up to thirty days without court authorization;
- (b) to modify the criteria for emergency commitment;
- (c) to require the administrator within twenty-four hours of the child's admission to notify a child who is admitted of his or her right to a review and to notify the Office of Child and Family Service Advocacy and the Official Guardian of the child's admission;
- (d) to require the Office of Child and Family Service Advocacy to ensure that the child receives an explanation of his or her rights forthwith and to require the Official Guardian to ensure that the child is represented as early as possible;
- (e) to require that the Child and Family Services Review Board hear any requests for review within five days of an application.

Section 119 is amended to authorize peace officers to apprehend a child who has run away from a secure treatment program. The period of commitment is stayed while the child is absent from the secure treatment program.

**SECTION 19.** Subsection 125 (2) of the Act is amended to permit restraint during transportation of a child who has been admitted to a secure treatment program under Part VI of the Act.

**SECTION 20.** Clause 126 (2) (c) provides that a consent to the administration of a psychotropic drug shall identify the drug clearly and specify any risks and possible side effects associated with the drug and how they vary with different dosages. The amendment changes "any risks" to "the risks".

**SECTION 21.** Section 29 of the *Mental Health Act* sets out rules with regard to disclosure under a subpoena or other process of clinical records in a psychiatric facility. The new section 166a set out in this section adopts those rules for any record of a mental disorder in the possession of a service provider.

**SECTIONS 22 to 24.** These provisions amend the regulation making authority under the Act in light of the amendments already discussed. The provision that allows the regulations to prescribe drugs or combinations of drugs as psychotropic drugs is amended by subsection 24 (2) to allow classes of drugs to be so prescribed.





**Bill 107**

**1988**

**An Act to amend the  
Child and Family Services Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Subsection 40 (2) of the *Child and Family Services Act, 1984*, being chapter 55, is repealed and the following substituted therefor:**

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

Warrant to  
apprehend  
child

(a) the child is in need of protection; and

(b) a less restrictive course of action is not available or will not protect the child adequately.

(2a) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (6).

Idem

(2) Subsection 40 (4) of the said Act is amended by adding at the end thereof "or to specify the premises where the child is located".

(3) Subsection 40 (5) of the said Act is amended by striking out "the" in the third line and inserting in lieu thereof "any".

(4) Clause 40 (6) (a) of the said Act is repealed and the following substituted therefor:

(a) a child is in need of protection; and

. . . . .

**(5) Subsections 40 (10) to (17) of the said Act are repealed and the following substituted therefor:**

Right of entry, etc.

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (6) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations re power of entry

(11) A child protection worker authorized to enter premises under subsection (5) or (10) shall exercise the power of entry in accordance with the regulations.

Peace officer has powers of child protection worker

(12) Subsections (2), (5), (6), (9), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

Protection from personal liability

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

**2. The said Act is amended by adding thereto the following sections:**

**SPECIAL CASES OF APPREHENSION OF CHILDREN**

Warrant to apprehend child in care

**40a.**—(1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a peace officer's or child protection worker's sworn information that,

- (a) the child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

Idem

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

No need to specify premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

(4) A peace officer or child protection worker who believes on reasonable and probable grounds that,

Apprehension of child in care without warrant

- (a) a child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1),

may without a warrant bring the child to a place of safety.

(5) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant.

(6) A person who apprehends a child under subsection (5) shall,

Idem

- (a) take the child to a place of safety to be detained until the child can be returned to the place of safety the child left; or
- (b) return the child or arrange for the child to be returned to the place of safety the child left.

**40b.**—(1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,

Apprehension of child under twelve

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or

- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to  
parent, etc.

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child  
not returned  
to parent,  
etc., within  
twelve hours

(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (6) and not apprehended under subsection (1).

Definition

**40c.**—(1) In this section, “parent” includes,

- (a) an approved agency that has custody of the child;
- (b) a person who has care and control of the child.

Warrant to  
apprehend  
runaway  
child

(2) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a parent of the child that,

- (a) the child is under the age of sixteen years;
- (b) the child has withdrawn from the parent's care and control without the parent's consent; and
- (c) the parent believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.

Idem

(3) A person who apprehends a child under subsection (2) shall return the child to the child's parent as soon as practicable and where it is not possible to return the child to the parent within a reasonable time, take the child to a place of safety.

Notice to  
parent, etc.

(4) The person in charge of a place of safety to which a child is taken under subsection (3) shall make reasonable efforts to notify the child's parent that the child is in the place of safety so that the child may be returned to the parent.



(5) Where a child taken to a place of safety under subsection (3) cannot be returned to the child's parent within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (2) and not apprehended under subsection (2).

Where child not returned to parent within twelve hours

(6) A justice of the peace shall not issue a warrant under subsection (2) where a child has withdrawn from the care and control of one parent with the consent of another parent under circumstances where a proceeding under section 37 of the *Children's Law Reform Act* would be more appropriate.

Where custody enforcement proceedings more appropriate R.S.O. 1980, c. 68

(7) It is not necessary in a warrant under subsection (2) to specify the premises where the child is located.

No need to specify premises

(8) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the parent,

Child protection proceedings

(a) the peace officer or child protection worker may take the child to a place of safety under subsection 40 (6); or

(b) where the child has been taken to a place of safety under subsection (5), the child shall be dealt with as if the child had been taken there under subsection 40 (6).

#### POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION

**40d.**—(1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 40a (1) or 40c (2) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child.

Authority to enter, etc.

(2) A person authorized under subsection 40a (4) or (5) or 40b (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

Police  
assistance

(4) A child protection worker acting under section 40a or 40c may call for the assistance of a peace officer.

Consent to  
examine child

(5) A child protection worker who deals with a child under subsection 40b (3) or 40c (5) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(6) Where a person who brings a child to a place of safety under section 40a or 40b believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Protection  
from  
personal  
liability

(7) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 40a, 40b or 40c or for an alleged neglect or default in the execution in good faith of that duty.

**3. Subsection 42 (2) of the said Act is amended by striking out "under subsection 43 (1) (child protection hearing)" in the fourth and fifth lines.**

**4. Subsection 43 (1) of the said Act is amended by inserting after "40 (1)" in the second line "or a matter is brought before the court".**

**5. Section 48 of the said Act is amended by inserting after "40 (1)" in the first line "or a matter is brought before the court".**

**6. Subsection 74 (2) of the said Act is amended by inserting after "40" in the second line "or 40d".**

**7. Subsections 75 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Allowing  
child to  
loiter, etc.

(5) No parent of a child less than sixteen years of age shall permit the child to,

- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
- (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual eighteen years of age or older to accompany the child.

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40b (1).

Police may take child home or to place of safety

**8. Clause 80 (b) of the said Act is repealed and the following substituted therefor:**

- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 40, 40a, 40b, 40c or 40d.

**9. Subsection 89 (2) of the said Act is repealed and the following substituted therefor:**

(2) A provincial director may detain a young person in a place of secure temporary detention if the circumstances described in paragraph 1 or 2 apply to the young person and if the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety:

Where secure detention available

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to

R.S.C. 1970, c. J-3

R.S.C. 1970,  
c. C-34

escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).

**10.—(1) Subsections 94 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:**

Apprehen-  
sion of young  
person absent  
from place of  
temporary  
detention

R.S.O. 1980,  
c. 400

(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

Idem: place  
of open  
custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

Young  
person to be  
returned  
within forty-  
eight hours

(3) A young person who is apprehended under this section shall be returned to the place from which he or she is absent within forty-eight hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 89 (2).

**(2) Subsections 94 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Authority to  
enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.



(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

Regulations re exercise of power of entry

**11.—(1) Paragraph 2 of subsection 110 (1) of the said Act is amended by striking out “or” at the end of subparagraph ii and by adding thereto the following subparagraph:**

- ia. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or

**(2) Subsections 110 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) Where an application is made under subsection (1), the court shall deal with the matter within ten days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for hearing

**(3) Section 110 of the said Act is amended by adding thereto the following subsections:**

(4a) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 113 (1) (a) to (f) and, where the child is less than twelve years old, the Minister consents to the child's admission.

Interim order

(4b) For the purpose of subsection (4a), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Evidence on adjournments

**12. Subsection 111 (3) of the said Act is amended by striking out “a single 180 day” in the second line and inserting in lieu thereof “the”.**

**13. Subsection 112 (4) of the said Act is amended by adding thereto the following clause:**

- (da) a society that has custody of the child under an order made under Part III (Child Protection).

**14. Subsections 114 (1) and (2) of the said Act are repealed and the following substituted therefor:**



Period of  
commitment

(1) The court shall specify in an order under subsection 113 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Where  
society is  
applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than sixty days, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

**15.—(1) Section 116 of the said Act is amended by adding thereto the following subsection:**

Idem

(1a) Where a person is kept in the secure treatment program under subsection 114 (4) after attaining the age of eighteen years,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- ➡ (c) a physician, with the written consent of the administrator and the person; or ⬆
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

(2) Subsection 116 (2) of the said Act is amended by inserting after "(1)" in the first line "or (1a)".

(3) Subsection 116 (3) of the said Act is amended by adding at the end thereof "or (1a)".

**(4) Subsection 116 (5) of the said Act is repealed and the following substituted therefor:**

(5) The court shall specify in an order under subsection 116 (4) the period not exceeding 180 days for which the child shall be committed to the secure treatment program. Period of extension

**16. The said Act is further amended by adding thereto the following sections:**

#### REVIEW OF COMMITMENT

**117a.**—(1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 113 (1) (commitment) or 116 (4) (extension): Review of commitment

1. The child, where the child is twelve years of age or more.
2. The child's parent.
3. The society having care, custody or supervision of the child.

(2) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1). ss. 110 (4-8), 111, 112 apply

(3) The court shall make an order terminating a child's commitment unless the court is satisfied that, Termination of order

- (a) the child has a mental disorder;
- (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
- (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 113 (1) or 116 (4), or other appropriate treatment.

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program. Idem



after receiving a notice under subsection (6) unless the Official Guardian is satisfied that another person will provide legal representation for the child within that time.

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

Application  
for review

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

Child may be  
kept in  
program  
while  
application  
pending  
Procedure

(11) Subsections 110 (6), (7) and (8) (hearing) and section 111 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

Time for  
review

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses 118 (2) (a) to (e).

Order

**18. Section 119 of the said Act is amended by adding thereto the following subsections:**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Apprehen-  
sion of child  
who leaves

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

Period of  
commitment

**19. Subsection 125 (2) of the said Act is amended by inserting after “child” in the third line “who has been admitted to a secure treatment program under this Part”.**

**20. Clause 126 (2) (c) of the said Act is amended by striking out “any” in the first line and inserting in lieu thereof “the”.**



**21.** The said Act is further amended by adding thereto the following section:

Definition

**166a.**—(1) In this section, “record of a mental disorder” means a record or a part of a record made about a person concerning a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person’s capacity to make reasoned judgments.

Disclosure pursuant to subpoena

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act unless a physician states in writing that he or she believes that to do so,

(a) is likely to result in harm to the treatment or recovery of the person to whom the record relates; or

(b) is likely to result in,

(i) injury to the mental condition of another person, or

(ii) bodily harm to another person.

Hearing to be held

(3) The court before which a matter described in subsection (2) is in issue on motion or, where a disclosure, transmittal or examination is not required by a court, the Divisional Court on motion shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

Idem

(4) A motion under subsection (3) shall be on notice to the physician and shall be held in the absence of the public.

Consideration of court

(5) In a motion under subsection (3), the court shall consider whether or not the disclosure, transmittal or examination of the record referred to in the physician’s statement is likely to have a result described in clause (2) (a) or (b) and for the purpose the court may examine the record.

Order of court

(6) The court shall not order that the record referred to in the physician’s statement be disclosed, transmitted or examined if the court is satisfied that a result described in clause (2) (a) or (b) is likely unless satisfied that to do so is essential in the interests of justice.



(7) Where a record of a mental disorder is required under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted shall return the record to the service provider forthwith after the determination of the matter in issue in respect of which the record was required.

Return of  
record to  
service  
provider

**22.—(1)** Clause 199 (a) of the said Act is amended by striking out “(14)” in the second line and inserting in lieu thereof “(10) and section 40d”.

(2) Section 199 of the said Act is amended by adding thereto the following clause:

(h) prescribing forms and providing for their use.

**23.** Clause 200 (1) (m) of the said Act is amended by striking out “by a warrant issued under subsection 94 (4)” in the second line and inserting in lieu thereof “under subsection 94 (5)”.

**24.—(1)** Clause 202 (a) of the said Act is amended by striking out “children” in the first line and inserting in lieu thereof “persons”.

(2) Clause 202 (i) of the said Act is amended by striking out “or combinations of drugs” in the first line and inserting in lieu thereof “combinations of drugs or classes of drugs”.

**25.** A child who is a patient in a psychiatric facility under a certificate of involuntary admission under the *Mental Health Act* on the day this section comes into force and who is in premises where a secure treatment program has been established or approved shall be deemed to have been committed to the secure treatment program under section 113 for a period that ends when the certificate expires.

Transition  
R.S.O. 1980,  
c. 262

**26.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**27.** The short title of this Act is the *Child and Family Services Amendment Act, 1988*.

Short title



# Bill 107

(Chapter 36  
*Statutes of Ontario, 1988*)

## An Act to amend the Child and Family Services Act, 1984

The Hon. J. Sweeney  
*Minister of Community and Social Services*



<i>1st Reading</i>	April 7th, 1988
<i>2nd Reading</i>	May 24th, 1988
<i>3rd Reading</i>	June 22nd, 1988
<i>Royal Assent</i>	June 22nd, 1988



**Bill 107**

**1988**

**An Act to amend the  
Child and Family Services Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Subsection 40 (2) of the *Child and Family Services Act, 1984*, being chapter 55, is repealed and the following substituted therefor:**

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

Warrant to  
apprehend  
child

- (a) the child is in need of protection; and
- (b) a less restrictive course of action is not available or will not protect the child adequately.

(2a) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (6).

Idem

**(2) Subsection 40 (4) of the said Act is amended by adding at the end thereof "or to specify the premises where the child is located".**

**(3) Subsection 40 (5) of the said Act is amended by striking out "the" in the third line and inserting in lieu thereof "any".**

**(4) Clause 40 (6) (a) of the said Act is repealed and the following substituted therefor:**

- (a) a child is in need of protection; and



**(5) Subsections 40 (10) to (17) of the said Act are repealed and the following substituted therefor:**

Right of  
entry, etc.

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (6) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations  
re power of  
entry

(11) A child protection worker authorized to enter premises under subsection (5) or (10) shall exercise the power of entry in accordance with the regulations.

Peace officer  
has powers  
of child  
protection  
worker

(12) Subsections (2), (5), (6), (9), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

Protection  
from  
personal  
liability

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

**2. The said Act is amended by adding thereto the following sections:**

**SPECIAL CASES OF APPREHENSION OF CHILDREN**

Warrant to  
apprehend  
child in care

**40a.**—(1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a peace officer's or child protection worker's sworn information that,

- (a) the child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

Idem

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

No need to  
specify  
premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

(4) A peace officer or child protection worker who believes on reasonable and probable grounds that,

Apprehension of child in care without warrant

- (a) a child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1),

may without a warrant bring the child to a place of safety.

(5) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant.

(6) A person who apprehends a child under subsection (5) shall,

Idem

- (a) take the child to a place of safety to be detained until the child can be returned to the place of safety the child left; or
- (b) return the child or arrange for the child to be returned to the place of safety the child left.

**40b.**—(1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,

Apprehension of child under twelve

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or

- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to  
parent, etc.

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child  
not returned  
to parent,  
etc., within  
twelve hours

(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (6) and not apprehended under subsection (1).

Definition

**40c.**—(1) In this section, “parent” includes,

- (a) an approved agency that has custody of the child;
- (b) a person who has care and control of the child.

Warrant to  
apprehend  
runaway  
child

(2) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a parent of the child that,

- (a) the child is under the age of sixteen years;
- (b) the child has withdrawn from the parent's care and control without the parent's consent; and
- (c) the parent believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.

Idem

(3) A person who apprehends a child under subsection (2) shall return the child to the child's parent as soon as practicable and where it is not possible to return the child to the parent within a reasonable time, take the child to a place of safety.

Notice to  
parent, etc.

(4) The person in charge of a place of safety to which a child is taken under subsection (3) shall make reasonable efforts to notify the child's parent that the child is in the place of safety so that the child may be returned to the parent.

(5) Where a child taken to a place of safety under subsection (3) cannot be returned to the child's parent within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (2) and not apprehended under subsection (2).

Where child not returned to parent within twelve hours

(6) A justice of the peace shall not issue a warrant under subsection (2) where a child has withdrawn from the care and control of one parent with the consent of another parent under circumstances where a proceeding under section 37 of the *Children's Law Reform Act* would be more appropriate.

Where custody enforcement proceedings more appropriate  
R.S.O. 1980, c. 68

(7) It is not necessary in a warrant under subsection (2) to specify the premises where the child is located.

No need to specify premises

(8) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the parent,

Child protection proceedings

- (a) the peace officer or child protection worker may take the child to a place of safety under subsection 40 (6); or
- (b) where the child has been taken to a place of safety under subsection (5), the child shall be dealt with as if the child had been taken there under subsection 40 (6).

#### POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION

**40d.**—(1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 40a (1) or 40c (2) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child.

Authority to enter, etc.

(2) A person authorized under subsection 40a (4) or (5) or 40b (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry



Police  
assistance

(4) A child protection worker acting under section 40a or 40c may call for the assistance of a peace officer.

Consent to  
examine child

(5) A child protection worker who deals with a child under subsection 40b (3) or 40c (5) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(6) Where a person who brings a child to a place of safety under section 40a or 40b believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Protection  
from  
personal  
liability

(7) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 40a, 40b or 40c or for an alleged neglect or default in the execution in good faith of that duty.

**3. Subsection 42 (2) of the said Act is amended by striking out "under subsection 43 (1) (child protection hearing)" in the fourth and fifth lines.**

**4. Subsection 43 (1) of the said Act is amended by inserting after "40 (1)" in the second line "or a matter is brought before the court".**

**5. Section 48 of the said Act is amended by inserting after "40 (1)" in the first line "or a matter is brought before the court".**

**6. Subsection 74 (2) of the said Act is amended by inserting after "40" in the second line "or 40d".**

**7. Subsections 75 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Allowing  
child to  
loiter, etc.

(5) No parent of a child less than sixteen years of age shall permit the child to,

- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
- (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual eighteen years of age or older to accompany the child.



(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40b (1).

Police may take child home or to place of safety

**8. Clause 80 (b) of the said Act is repealed and the following substituted therefor:**

- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 40, 40a, 40b, 40c or 40d.

**9. Subsection 89 (2) of the said Act is repealed and the following substituted therefor:**

(2) A provincial director may detain a young person in a place of secure temporary detention if the circumstances described in paragraph 1 or 2 apply to the young person and if the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety:

Where secure detention available

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to

R.S.C. 1970,  
c. J-3

R.S.C. 1970,  
c. C-34

escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).

**10.—(1) Subsections 94 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:**

Apprehen-  
sion of young  
person absent  
from place of  
temporary  
detention  
R.S.O. 1980,  
c. 400

(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

Idem: place  
of open  
custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

Young  
person to be  
returned  
within forty-  
eight hours

(3) A young person who is apprehended under this section shall be returned to the place from which he or she is absent within forty-eight hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 89 (2).

**(2) Subsections 94 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Authority to  
enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

Regulations re exercise of power of entry

**11.—(1) Paragraph 2 of subsection 110 (1) of the said Act is amended by striking out “or” at the end of subparagraph ii and by adding thereto the following subparagraph:**

- iiia. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or

**(2) Subsections 110 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) Where an application is made under subsection (1), the court shall deal with the matter within ten days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for hearing

**(3) Section 110 of the said Act is amended by adding thereto the following subsections:**

(4a) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 113 (1) (a) to (f) and, where the child is less than twelve years old, the Minister consents to the child's admission.

Interim order

(4b) For the purpose of subsection (4a), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Evidence on adjournments

**12. Subsection 111 (3) of the said Act is amended by striking out “a single 180 day” in the second line and inserting in lieu thereof “the”.**

**13. Subsection 112 (4) of the said Act is amended by adding thereto the following clause:**

- (da) a society that has custody of the child under an order made under Part III (Child Protection).

**14. Subsections 114 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Period of  
commitment

(1) The court shall specify in an order under subsection 113 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Where  
society is  
applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than sixty days, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

**15.—(1) Section 116 of the said Act is amended by adding thereto the following subsection:**

Idem

(1a) Where a person is kept in the secure treatment program under subsection 114 (4) after attaining the age of eighteen years,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

**(2) Subsection 116 (2) of the said Act is amended by inserting after "(1)" in the first line "or (1a)".**

**(3) Subsection 116 (3) of the said Act is amended by adding at the end thereof "or (1a)".**



**(4) Subsection 116 (5) of the said Act is repealed and the following substituted therefor:**

(5) The court shall specify in an order under subsection 116 (4) the period not exceeding 180 days for which the child shall be committed to the secure treatment program. Period of extension

**16. The said Act is further amended by adding thereto the following sections:**

#### REVIEW OF COMMITMENT

**117a.**—(1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 113 (1) (commitment) or 116 (4) (extension): Review of commitment

1. The child, where the child is twelve years of age or more.
2. The child's parent.
3. The society having care, custody or supervision of the child.

(2) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1). ss. 110 (4-8), 111, 112 apply

(3) The court shall make an order terminating a child's commitment unless the court is satisfied that, Termination of order

- (a) the child has a mental disorder;
- (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
- (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 113 (1) or 116 (4), or other appropriate treatment.

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program. Idem





after receiving a notice under subsection (6) unless the Official Guardian is satisfied that another person will provide legal representation for the child within that time.

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

Application  
for review

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

Child may be  
kept in  
program  
while  
application  
pending  
Procedure

(11) Subsections 110 (6), (7) and (8) (hearing) and section 111 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

Time for  
review

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses 118 (2) (a) to (e).

Order

**18. Section 119 of the said Act is amended by adding thereto the following subsections:**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Apprehen-  
sion of child  
who leaves

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

Period of  
commitment

**19. Subsection 125 (2) of the said Act is amended by inserting after "child" in the third line "who has been admitted to a secure treatment program under this Part".**

**20. Clause 126 (2) (c) of the said Act is amended by striking out "any" in the first line and inserting in lieu thereof "the".**

**21. The said Act is further amended by adding thereto the following section:**

Definition

**166a.**—(1) In this section, “record of a mental disorder” means a record or a part of a record made about a person concerning a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person’s capacity to make reasoned judgments.

Disclosure  
pursuant to  
subpoena

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act unless a physician states in writing that he or she believes that to do so,

(a) is likely to result in harm to the treatment or recovery of the person to whom the record relates;  
or

(b) is likely to result in,

(i) injury to the mental condition of another person, or

(ii) bodily harm to another person.

Hearing to  
be held

(3) The court before which a matter described in subsection (2) is in issue on motion or, where a disclosure, transmittal or examination is not required by a court, the Divisional Court on motion shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

Idem

(4) A motion under subsection (3) shall be on notice to the physician and shall be held in the absence of the public.

Consideration  
of court

(5) In a motion under subsection (3), the court shall consider whether or not the disclosure, transmittal or examination of the record referred to in the physician’s statement is likely to have a result described in clause (2) (a) or (b) and for the purpose the court may examine the record.

Order of  
court

(6) The court shall not order that the record referred to in the physician’s statement be disclosed, transmitted or examined if the court is satisfied that a result described in clause (2) (a) or (b) is likely unless satisfied that to do so is essential in the interests of justice.

(7) Where a record of a mental disorder is required under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted shall return the record to the service provider forthwith after the determination of the matter in issue in respect of which the record was required.

Return of  
record to  
service  
provider

**22.—**(1) Clause 199 (a) of the said Act is amended by striking out “(14)” in the second line and inserting in lieu thereof “(10) and section 40d”.

(2) Section 199 of the said Act is amended by adding thereto the following clause:

(h) prescribing forms and providing for their use.

**23.** Clause 200 (1) (m) of the said Act is amended by striking out “by a warrant issued under subsection 94 (4)” in the second line and inserting in lieu thereof “under subsection 94 (5)”.

**24.—**(1) Clause 202 (a) of the said Act is amended by striking out “children” in the first line and inserting in lieu thereof “persons”.

(2) Clause 202 (i) of the said Act is amended by striking out “or combinations of drugs” in the first line and inserting in lieu thereof “combinations of drugs or classes of drugs”.

**25.** A child who is a patient in a psychiatric facility under a certificate of involuntary admission under the *Mental Health Act* on the day this section comes into force and who is in premises where a secure treatment program has been established or approved shall be deemed to have been committed to the secure treatment program under section 113 for a period that ends when the certificate expires.

Transition  
R.S.O. 1980,  
c. 262

**26.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**27.** The short title of this Act is the *Child and Family Services Amendment Act, 1988*.

Short title









# Bill 108

## An Act to amend the Rental Housing Protection Act, 1986

The Hon. C. Hošek  
*Minister of Housing*

*1st Reading*      April 7th, 1988  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The *Rental Housing Protection Act, 1986* contains a sunset provision repealing the Act on the 30th day of June, 1988. The purpose of the Bill is to delay the repeal of the Act for one year, to the 30th day of June, 1989. A consequential change is made to the *Land Titles Act* by section 1.

**Bill 108****1988**

**An Act to amend the  
Rental Housing Protection Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 12 (2) of the *Rental Housing Protection Act, 1986*, being chapter 26, is amended by striking out “the 30th day of June, 1988” in the second and third lines and inserting in lieu thereof “the 30th day of June, 1989”.

**2.** Section 13 of the said Act is repealed and the following substituted therefor:

**13.** This Act, except subsection 12 (2), is repealed on the 30th day of June, 1989. Repeal

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Rental Housing Protection Amendment Act, 1988*. Short title





Bill 108

(Chapter 22  
*Statutes of Ontario, 1988*)

An Act to amend the  
Rental Housing Protection Act, 1986

The Hon. C. Hošek  
*Minister of Housing*

---

<i>1st Reading</i>	April 7th, 1988
<i>2nd Reading</i>	May 16th, 1988
<i>3rd Reading</i>	May 17th, 1988
<i>Royal Assent</i>	May 24th, 1988

---



**Bill 108****1988**

**An Act to amend the  
Rental Housing Protection Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 12 (2) of the *Rental Housing Protection Act, 1986*, being chapter 26, is amended by striking out “the 30th day of June, 1988” in the second and third lines and inserting in lieu thereof “the 30th day of June, 1989”.

**2.** Section 13 of the said Act is repealed and the following substituted therefor:

**13.** This Act, except subsection 12 (2), is repealed on the 30th day of June, 1989. Repeal

**3.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**4.** The short title of this Act is the *Rental Housing Protection Amendment Act, 1988*. Short title



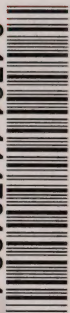












3 1761 11470188 1